

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 *****

5 IN RE: NATIONAL MDL No. 2804
6 PRESCRIPTION OPIATE
LITIGATION Case No.
1:17-MD-2804

7 *****

8 THIS DOCUMENT RELATES TO Hon. Dan A. Polster
9 ALL CASES

10 *****

11 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
12 CONFIDENTIALITY REVIEW
13 VIDEOTAPED DEPOSITION OF CRAIG SCHIAVO

14
15 Thursday, January 17th, 2019
16 8:06 a.m.

17
18 Held At:
19 Omni Hotel
20 One West Exchange Street
21 Providence, Rhode Island

22
23 REPORTED BY:
24 Maureen O'Connor Pollard, RMR, CLR, CSR

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7 28 Bridgeside Boulevard	7
8 Mt. Pleasant, South Carolina 29464	8 E X H I B I T S
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1	PROCEEDINGS
2	
3	THE VIDEOGRAPHER: We are now on the
4	record. My name is Robert Sweig, and I'm a
5	videographer for Golkow Litigation Services.
6	Today's date is January 17, 2019, and
7	the time is 8:06 a.m.
8	This video deposition is being held in
9	Providence, Rhode Island in the matter of In Re
10	National Prescription Opiate Litigation pending
11	before the United States District Court for the
12	Northern District of Ohio, Eastern Division.
13	The deponent is Craig Schiavo.
14	Counsel appearances will be as noted
15	on the stenographic record.
16	The court reporter is Maureen Pollard
17	who will now swear in our witness.
18	
19	CRAIG SCHIAVO,
20	having been duly sworn, was examined and
21	testified as follows:
22	EXAMINATION
23	BY MR. ELSNER:
24	Q. Good morning.

	Page 9
1	A. Good morning.
2	Q. My name is Mike Elsner, and I'm from
3	the law firm of Motley Rice, and I represent the
4	plaintiffs in these actions.
5	Can you please tell us your name?
6	A. My name is Craig Schiavo.
7	Q. When were you born?
8	A. February 12, 1982.
9	Q. So how old are you?
10	A. 36.
11	Q. 36.
12	And where do you live?
13	A. Medway, Massachusetts.
14	Q. And you graduated from Lasalle
15	University, is that right?
16	A. That's right.
17	Q. And that's in Philadelphia?
18	A. That's in Philadelphia.
19	Q. In 2004?
20	A. Yes.
21	Q. Okay. Did you graduate with a degree?
22	A. Yes.
23	Q. What is the degree?
24	A. My major was business management.

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1 Q. Okay. Did you take any courses in
2 pharmaceuticals or pharmacy?
3 A. Not that I recall.
4 Q. Before joining Henry Schein, did you
5 have any coursework or take any studies in DA
6 regulations?
7 A. Not that I recall.
8 Q. Okay. When did you join Henry Schein?
9 Was that your first job out of college?
10 A. I joined Henry Schein in June of 2004,
11 and that was my first full-time job out of
12 college.
13 Q. Okay. And what were you hired to do?
14 A. When I started in 2004, I was doing
15 product recalls.
16 Q. And what did that involve?
17 A. We would receive recalls or
18 withdrawals from manufacturers or distributors,
19 and my responsibility was to coordinate the --
20 making sure that our distribution centers put a
21 block on the product, and then if required
22 whatever notifications needed to go to either
23 our customers, or just coordinate the recall.
24 Q. Okay. And Henry Schein is a wholesale

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1 distributor of medical products and drugs, is
2 that right?
3 A. That's part of their services, yes.
4 Q. What else do they do?
5 A. They distribute a lot of things.
6 Q. Okay. But they do distribute
7 controlled substances, is that right?
8 A. At the time that I worked there, yes.
9 Q. Okay. And did that include Schedule
10 II narcotics as well as Schedule III narcotics?
11 MS. MILLER: Object to form.
12 A. Yes.
13 BY MR. ELSNER:
14 Q. And can you give us a description of
15 Henry Schein's customer base as it related to
16 the sale of controlled substances?
17 A. We distributed mainly to the
18 office-based practitioner from what I remember.
19 Q. Okay. So that would include medical
20 doctors in their offices, is that right?
21 A. Yes.
22 Q. And dentists?
23 A. I believe we distributed to dentists,
24 yes.

Page 12

1 Q. And veterinary clinics?
2 A. For -- I don't think so the whole time
3 that I worked there, but at some point they did.
4 Q. Okay. Did it include retail
5 pharmacies?
6 A. For most of the time that I was there,
7 no. At the very end of my time with Henry
8 Schein I vaguely remember going or dealing with
9 a pharmacy, a few pharmacies.
10 Q. And would these be large retail
11 pharmacy chains like CVS or Walgreen's, or are
12 we talking about smaller pharmacies?
13 A. To the best of my recollection, I
14 think it was just smaller pharmacies.
15 Q. Okay. And how long did you perform
16 your job for Henry Schein in product recalls?
17 You started in June, 2004, and when did that
18 position end, and what was your next position
19 there?
20 A. I don't remember exactly how long I
21 was in the role. It might have been a couple
22 years, two, two and a half years. And then
23 after that my role was dealing with inspections
24 and controlled substances and suspicious order

Page 13

1 monitoring.
2 Q. Did you begin that roughly in 2007?
3 Does that sound about right?
4 A. I don't recall.
5 Q. Okay. How was it that you
6 transitioned from product recalls into
7 regulatory specialist related to DEA compliance?
8 MS. MILLER: Object to form.
9 A. Can you just repeat the question?
10 BY MR. ELSNER:
11 Q. Yes. Well, let me ask it a different
12 way.
13 What was your title after you moved
14 from recall coordinator? What was your next
15 title at Henry Schein?
16 A. I don't remember the specific title.
17 Q. Okay. But what were you responsible
18 for in your new position?
19 A. I think I was still supporting
20 recalls. And then when I first started the role
21 I don't remember exactly what my
22 responsibilities were.
23 Q. Did it include any responsibilities
24 for DEA compliance with respect to controlled

<p style="text-align: right;">Page 14</p> <p>1 substances?</p> <p>2 A. When I first transitioned into the</p> <p>3 role, I don't know what my responsibilities</p> <p>4 were, but it was learning the new role, and part</p> <p>5 of that was around controlled substances and</p> <p>6 inspections in our distribution centers.</p> <p>7 Q. And as you evolved into that role</p> <p>8 after the training period, then what were your</p> <p>9 general responsibilities in that position?</p> <p>10 A. Continued to be government</p> <p>11 inspections, training of some employees, and</p> <p>12 then compliance with controlled substances and</p> <p>13 suspicious order monitoring.</p> <p>14 Q. How many -- did you have employees</p> <p>15 that worked for you in that position?</p> <p>16 A. I had no direct reports.</p> <p>17 Q. Okay. How large was the team that</p> <p>18 dealt with compliance related to controlled</p> <p>19 substances at Henry Schein in that period?</p> <p>20 A. I'm not sure -- I mean, a lot of</p> <p>21 people had a part in the process. I don't know</p> <p>22 how many.</p> <p>23 Q. Were you involved in establishing</p> <p>24 Henry Schein's suspicious order monitoring</p>	<p style="text-align: right;">Page 16</p> <p>1 MR. MONTMINY: Objection. Form, asked</p> <p>2 and answered.</p> <p>3 A. I don't recall what the system was</p> <p>4 prior to me going to that role.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Did it exist?</p> <p>7 A. I don't recall.</p> <p>8 Q. At some point in time you became a</p> <p>9 senior regulatory specialist at Henry Schein, is</p> <p>10 that right?</p> <p>11 A. I believe so.</p> <p>12 Q. Okay. And was that in 2012?</p> <p>13 A. I don't recall when that happened.</p> <p>14 Q. Was it shortly before you left Henry</p> <p>15 Schein?</p> <p>16 A. I'm not sure what you mean by</p> <p>17 "shortly," but I don't remember exactly when I</p> <p>18 went into that role, or got that title.</p> <p>19 Q. How long did you serve in that role?</p> <p>20 A. Again, I don't remember when I -- I</p> <p>21 think that was a promotion. I don't remember</p> <p>22 when that happened.</p> <p>23 Q. Did your responsibilities change in</p> <p>24 any way?</p>
<p style="text-align: right;">Page 15</p> <p>1 program for controlled substances?</p> <p>2 MR. MONTMINY: Objection. Form,</p> <p>3 outside the scope.</p> <p>4 A. I was part of a team that worked on</p> <p>5 suspicious order monitoring.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. How many people were in that team?</p> <p>8 A. Again, I don't recall how many. There</p> <p>9 was a team of people. I can't remember</p> <p>10 everyone.</p> <p>11 Q. Less than ten? Less than five?</p> <p>12 What's your best estimate?</p> <p>13 A. Again, I don't recall. It wasn't just</p> <p>14 compliance. There were other departments that</p> <p>15 were participating. I can't even give a good</p> <p>16 guess on how many people.</p> <p>17 Q. When did Henry Schein develop its</p> <p>18 suspicious order monitoring system initially?</p> <p>19 MR. MONTMINY: Objection to form.</p> <p>20 A. I'm not sure.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Was it in place in 2007 when you</p> <p>23 transitioned into that position, or was it</p> <p>24 something that you developed in that position?</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I don't remember.</p> <p>2 Q. Did you have direct reports?</p> <p>3 A. I don't believe I ever had direct</p> <p>4 reports at Henry Schein.</p> <p>5 Q. I want to show you something on the</p> <p>6 screen, I didn't print it for you, but it might</p> <p>7 help your recollection with some of the dates,</p> <p>8 if that's okay.</p> <p>9 A. Sure.</p> <p>10 MS. MILLER: Mike, do you have hard</p> <p>11 copies?</p> <p>12 MR. ELSNER: I'll have hard copies of</p> <p>13 most everything else, but not this. This is his</p> <p>14 LinkedIn page. I'm going to show it to him and</p> <p>15 see if it helps him remember some of the dates.</p> <p>16 MS. MILLER: Craig, are you able to --</p> <p>17 MR. ELSNER: There's a screen, but</p> <p>18 it's not there yet.</p> <p>19 Can we just go off the record for a</p> <p>20 quick minute while we get this? Sorry.</p> <p>21 THE VIDEOGRAPHER: We're going off the</p> <p>22 record at 8:17 a.m.</p> <p>23 (Pause.)</p> <p>24 THE VIDEOGRAPHER: We're back on the</p>

<p style="text-align: right;">Page 18</p> <p>1 record at 8:18 a.m. 2 (Whereupon, CVS-Schiavo-1 was marked 3 for identification.) 4 BY MR. ELSNER: 5 Q. Mr. Schiavo, we've placed before you 6 what we're going to mark as Exhibit 1. Is this 7 a copy of your LinkedIn page? 8 A. It looks to be my LinkedIn page. 9 Q. That's your picture? 10 A. That is my picture. 11 Q. Okay. Did you draft -- did you create 12 your own LinkedIn page? 13 A. Yes. 14 Q. Okay. Let's move down to the portion 15 that deals with your work experience at Henry 16 Schein. I think it starts on the bottom of the 17 first page there. It says that you worked there 18 for roughly eight years. Is that accurate? 19 A. That seems about right. 20 Q. Okay. When did you create your 21 LinkedIn page? 22 A. I don't remember when I created it. 23 Q. It says here that your work for Henry 24 Schein was in Greenville, South Carolina. Is</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay. The first time you started 2 handling DEA compliance, was that 2007? 3 A. I don't remember the exact year. 4 Q. If we go back to the first page, I'm 5 sorry we're fumbling through this a little bit, 6 there's a summary of your work experience, and 7 it lists on the bottom that you were a 8 regulatory associate from 2004 to 2007. Does 9 that sound right? 10 A. That seems about right. I don't 11 specifically recall those dates, but... 12 Q. When you drafted your LinkedIn page, 13 did you make an effort to make sure it was 14 accurate? 15 MS. MILLER: Object to form. 16 A. I don't recall doing anything to 17 intentionally not be accurate, but I don't spend 18 much time on LinkedIn or use LinkedIn very 19 often. 20 BY MR. ELSNER: 21 Q. Okay. Above that you listed 22 "Regulatory Specialist - DEA Compliance" from 23 2007 to 2012. Does that -- is that accurate? 24 A. That's what it says there. Again, I</p>
<p style="text-align: right;">Page 19</p> <p>1 that where you were working when you worked for 2 them? 3 A. Part of the time that I worked for 4 them it was in Greenville. 5 Q. What period of time did you spend in 6 Greenville? 7 A. It was my last year with the company. 8 Q. Your last year. 9 Where were you before that? 10 A. I was in Melville, Long Island. 11 Q. In New York? 12 A. In New York. 13 Q. Okay. What year did you move to 14 Greenville? 15 A. I believe it was 2011. 16 Q. Okay. On the second page of your 17 LinkedIn page it lists -- the top of the second 18 page, it says "Senior Regulatory Specialist - 19 DEA Compliance," and it's listed there from June 20 of 2004 to August of 2012, if I can read that 21 correctly. Is that accurate? 22 A. That's what it says there. I started 23 in June of 2004. I wasn't handling anything 24 with DEA compliance that I recall in 2004.</p>	<p style="text-align: right;">Page 21</p> <p>1 don't specifically recall the dates where I 2 started the position, but that's what it says. 3 Q. Okay. And then in 2012 you were a 4 senior regulatory specialist for DEA compliance, 5 is that right? 6 A. I know in 2012 I was a senior 7 regulatory specialist. 8 Q. Okay. And Henry Schein hired the 9 Buzzeo Group as consultants to work on the 10 suspicious order monitoring program for 11 controlled substances, is that right? 12 MR. MONTMINY: Objection. Outside the 13 scope. 14 A. I don't recall exactly why we hired 15 Buzzeo, if it was there specifically for SOM or 16 just general compliance. 17 BY MR. ELSNER: 18 Q. Do you know when Henry Schein hired 19 Buzzeo? 20 A. I don't recall. 21 Q. Do you know what Buzzeo -- what was 22 your understanding of what work Buzzeo was doing 23 for Henry Schein? 24 MR. MONTMINY: Objection. Outside the</p>

<p style="text-align: right;">Page 22</p> <p>1 scope.</p> <p>2 A. We worked with Buzzeo on general DEA</p> <p>3 compliance issues, as I remember it.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. Such as what?</p> <p>6 A. Inspections, SOM, anything that had to</p> <p>7 do with DEA compliance.</p> <p>8 Q. Who specifically at Buzzeo did you</p> <p>9 work with?</p> <p>10 A. There were a number of people. I</p> <p>11 can't recall everyone that I worked with at</p> <p>12 Buzzeo.</p> <p>13 Q. You said that Buzzeo did work for</p> <p>14 Henry Schein on their SOM program. What type of</p> <p>15 work did they do?</p> <p>16 MR. MONTMINY: Objection. Outside the</p> <p>17 scope.</p> <p>18 A. So I recall working with Buzzeo on --</p> <p>19 I mean, I used to speak to Buzzeo for guidance</p> <p>20 on lots of topics, not specific to SOM, but they</p> <p>21 helped us develop the newer system, I guess,</p> <p>22 that I was a part of. That was part of the role</p> <p>23 that they played.</p> <p>24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 24</p> <p>1 A. I don't recall any specific</p> <p>2 documentation or training materials.</p> <p>3 Q. Did they come into Henry Schein and</p> <p>4 offer training, seminars, or sessions with</p> <p>5 employees at Henry Schein?</p> <p>6 MR. MONTMINY: Objection. Outside the</p> <p>7 scope.</p> <p>8 A. I recall at least one training.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. Who did the training, do you recall?</p> <p>11 A. I don't recall who it was.</p> <p>12 Q. What work were you doing on the</p> <p>13 suspicious order monitoring system at Henry</p> <p>14 Schein for controlled substances?</p> <p>15 A. At which point are you referring to?</p> <p>16 Q. Walk me through from 2007 to 2012.</p> <p>17 A. I know in 2007, if that's when I</p> <p>18 transitioned based on my LinkedIn page, I was</p> <p>19 probably just learning. And then by the end in</p> <p>20 2012, my role was again -- specifically to SOM?</p> <p>21 Q. Yes.</p> <p>22 A. I was conducting site visits on</p> <p>23 customers and reviewing orders that were flagged</p> <p>24 by the SOM system.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. The newer system is a newer suspicious</p> <p>2 order monitoring system for controlled</p> <p>3 substances, is that what you mean?</p> <p>4 A. Yeah, it was either the newer or</p> <p>5 enhanced system that was being worked on.</p> <p>6 Q. Were they -- what was --</p> <p>7 A. The enhanced system.</p> <p>8 Q. The enhanced system.</p> <p>9 Did Buzzeo assist Henry Schein in</p> <p>10 developing an algorithm for its suspicious order</p> <p>11 monitoring program?</p> <p>12 MR. MONTMINY: Objection. Outside the</p> <p>13 scope.</p> <p>14 A. I believe so.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. And did Buzzeo create training</p> <p>17 materials and train employees at Henry Schein on</p> <p>18 the suspicious order monitoring system?</p> <p>19 A. What exactly do you mean by</p> <p>20 "training"?</p> <p>21 Q. Well, did they develop training</p> <p>22 materials for Henry Schein to train their</p> <p>23 employees on the suspicious order monitoring</p> <p>24 system for controlled substances?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. So as I understand it, the suspicious</p> <p>2 order monitoring system would use an algorithm</p> <p>3 to identify potentially suspicious orders, is</p> <p>4 that generally accurate?</p> <p>5 MS. MILLER: Object to form.</p> <p>6 A. The suspicious order monitoring system</p> <p>7 was a piece of the process used to identify</p> <p>8 orders of interest, but that wasn't the only way</p> <p>9 to identify orders.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. And once orders were identified of</p> <p>12 interest, did you have responsibility for</p> <p>13 reviewing those orders to determine whether they</p> <p>14 were potentially suspicious of diversion or not?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. That was part of my responsibilities.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. What would you do to do that when you</p> <p>19 worked at Henry Schein?</p> <p>20 A. It all depended on the order. There</p> <p>21 were tons of approaches to take to review an</p> <p>22 order.</p> <p>23 Q. Do you know what the criteria that</p> <p>24 Henry Schein was using at that time, what its</p>

<p style="text-align: right;">Page 26</p> <p>1 algorithm was pulling orders for to determine 2 whether they should be -- whether they should 3 have an enhanced review? 4 MR. MONTMINY: Objection. Form, 5 outside the scope. 6 A. The specific logic used by the 7 algorithm, I didn't know that. I knew at a high 8 level the system was looking for orders of 9 unusual size, buying pattern, or frequency. 10 BY MR. ELSNER: 11 Q. When they identified those orders, 12 what were the tools that you used to determine 13 whether an order was -- should be further 14 investigated? 15 MS. MILLER: Object to form. 16 A. There is no limitation on what I could 17 use. Whatever information that was available to 18 me or that I could use, I did. 19 BY MR. ELSNER: 20 Q. What information was available to you? 21 Were there databases that you could pull upon, 22 or was there order history you could review? 23 What were the items you could look at to 24 determine whether a particular order was worthy</p>	<p style="text-align: right;">Page 28</p> <p>1 would just Google the doctor office name. 2 Q. Okay. Anything else? 3 A. There are lots of things. Anything 4 that I would see or could research, I would do. 5 Q. I appreciate there are lots of things, 6 but I need to get a more specific sense of what 7 you actually did. 8 So did you look to determine whether 9 they had a valid DEA license? 10 MS. MILLER: Object to form. 11 A. That specifically was not my role. 12 BY MR. ELSNER: 13 Q. Okay. Did you look to see whether 14 they had a criminal background, or a criminal 15 history? 16 MS. MILLER: Object to form. 17 A. I don't recall ever specifically 18 looking for that. 19 BY MR. ELSNER: 20 Q. What determined whether you would make 21 a site visit to a particular doctor's office or 22 dentist's office or something else like that? 23 MS. MILLER: Object to form. 24 A. I don't think there was one criteria</p>
<p style="text-align: right;">Page 27</p> <p>1 of enhanced investigation? 2 MR. MONTMINY: Objection. Form, 3 outside the scope. 4 A. I can't remember everything that I 5 used. Some of the things you mentioned were 6 data sources that we used. It also included 7 phone calls or site visits or internet searches. 8 I mean, there were -- any resource that I could 9 use, I would -- was available. 10 BY MR. ELSNER: 11 Q. Did you have databases that you could 12 pull upon, outside databases that you could pull 13 upon to search for information about particular 14 physicians? 15 MS. MILLER: Object to form. 16 A. I'm not sure what you're referring to 17 by outside databases. 18 BY MR. ELSNER: 19 Q. Well, you mentioned that you could 20 access information on the internet about people, 21 and you do research and internet searches. So 22 what type of searches are we talking about? 23 A. There were lots of searches. One 24 example would be if it was a doctor's office, I</p>	<p style="text-align: right;">Page 29</p> <p>1 that when I saw it I said, this needs a site 2 visit. 3 BY MR. ELSNER: 4 Q. Well, you didn't visit every doctor's 5 office that was identified by the suspicious 6 order monitoring system, right? 7 A. I don't believe so. 8 Q. Okay. So what were among the criteria 9 you would use to determine whether you were 10 going to conduct a site visit? 11 MR. MONTMINY: Object to form. 12 Outside the scope. 13 A. There's lots of situations that would 14 cause me to do a site -- there is not one or 15 two, but there were lots. 16 BY MR. ELSNER: 17 Q. Well, give us some examples. 18 A. If there was -- if I felt that an 19 order was significantly higher than someone's 20 previous order. 21 Q. What would make it significantly 22 higher? 23 A. I don't know. Determination at the 24 time.</p>

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1 Q. How far back in the order history
2 would you look to determine whether this
3 particular order was significantly higher than
4 prior orders?
5 MR. MONTMINY: Objection. Form,
6 outside the scope.
7 A. I don't recall it. I'm sure it was
8 different for every situation.
9 BY MR. ELSNER:
10 Q. Was there a particular database at
11 Henry Schein that contained that information?
12 A. We had a data warehouse.
13 Q. What data was contained in the data
14 warehouse that you used to conduct your
15 suspicious order monitoring review?
16 MR. MONTMINY: Objection. Form.
17 A. I don't recall everything that I
18 pulled out of there. I know order history was
19 one.
20 BY MR. ELSNER:
21 Q. What else?
22 A. I don't recall what else was in there.
23 Q. Did you ever seek from a physician's
24 office information about their patients?

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1 MR. MONTMINY: Objection. Form,
2 outside the scope.
3 A. I'm not sure what you mean by
4 information on patients.
5 BY MR. ELSNER:
6 Q. Well, did you determine what kind of
7 physician the doctor was and what kind of
8 patients the physician was providing services
9 to?
10 MR. MONTMINY: Objection. Form,
11 outside the scope.
12 A. Part of when I spoke to a physician I
13 would ask what their practice was, and typically
14 I get a high level what are your visits like
15 with patients. I never got to details.
16 BY MR. ELSNER:
17 Q. When you say high level what were your
18 visits like with patients, you'd ask them how
19 long they'd spend with a patient?
20 MS. MILLER: Object to form.
21 A. Not specifically. Every conversation
22 with a doctor was different. But I'd ask how
23 many patients you'd seen, as an example, but
24 every conversation was different.

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1 BY MR. ELSNER:
2 Q. How long do those calls generally
3 last?
4 MR. MONTMINY: Objection. Form,
5 outside the scope.
6 A. Every call was a different length.
7 BY MR. ELSNER:
8 Q. Every call was unique and completely
9 different? You never asked the same question,
10 you never had a set of questions that you were
11 sure to follow up with with each physician?
12 MR. MONTMINY: Objection. Form.
13 A. I believe there are guidelines that I
14 used, but every call was unique.
15 BY MR. ELSNER:
16 Q. So other than how many patients the
17 doctor had seen, what else would you ask?
18 MR. MONTMINY: Objection. Form,
19 outside the scope.
20 A. It all depends on why I was following
21 up on the order.
22 BY MR. ELSNER:
23 Q. Did you ever ask for dispensing
24 history from a physician's office?

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1 MR. MONTMINY: Objection. Form.
2 A. I don't recall.
3 BY MR. ELSNER:
4 Q. Did you ever ask whether that
5 physician was ordering controlled substances
6 from other wholesale distributors?
7 MR. MONTMINY: Objection. Form.
8 A. I might have. I don't specifically
9 remember.
10 BY MR. ELSNER:
11 Q. What else do you remember about what
12 you'd ask physicians for.
13 MR. MONTMINY: Objection. Form.
14 A. Again, it all depended on why I was
15 conducting the order.
16 BY MR. ELSNER:
17 Q. When you were going to do a site
18 visit, what was it that you were looking for?
19 MR. MONTMINY: Objection. Form.
20 A. It all depends on why I decided to do
21 the site visit.
22 BY MR. ELSNER:
23 Q. Give me an example, any example.
24 A. At a high level I was looking to see

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1 that they were a legitimate physician.
2 Q. How did you do that?
3 MS. MILLER: Object to form.
4 A. Doing a site visit and speaking with
5 the doctor or, like I said, Google searches and
6 reviews. I mean, there was tons of resources.
7 BY MR. ELSNER:
8 Q. Did you look at dispensing history
9 from those physicians' offices? When you
10 conducted a site visit, would you ask to see
11 their dispensing records?
12 MR. MONTMINY: Object to form.
13 Outside the scope.
14 A. I don't recall ever asking to see
15 dispensing records.
16 BY MR. ELSNER:
17 Q. There came a time when you -- strike
18 that.
19 Buzzeo had annual conferences for
20 controlled substances, is that right?
21 A. I believe they were annual.
22 Q. And you attended some of those?
23 A. Yes.
24 Q. How many of them did you attend?

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1 A. I don't recall.
2 Q. More than one?
3 A. I attended more than one.
4 Q. How many?
5 MS. MILLER: Object to form.
6 BY MR. ELSNER:
7 Q. Five?
8 MS. MILLER: Object to form.
9 A. I don't recall the exact number.
10 BY MR. ELSNER:
11 Q. They had a conference at the Crystal
12 Gateway Marriott in Arlington, Virginia in
13 October of 2008. That was the sixth one. Did
14 you attend that one in 2008?
15 MS. MILLER: Object to form.
16 A. I don't specifically remember the
17 year, but it's possible.
18 MR. ELSNER: We'll mark this document
19 as Exhibit 2.
20 (Whereupon, CVS-Schiavo-2 was marked
21 for identification.)
22 BY MR. ELSNER:
23 Q. This is MR 98.
24 MS. MILLER: One copy is for me. You

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1 keep that one.
2 MR. MONTMINY: Do you have an extra
3 copy of that?
4 BY MR. ELSNER:
5 Q. Mr. Schiavo, I placed before you a
6 series of e-mails. And if you start on the
7 bottom e-mail on the first page, which is
8 495778, you are among the recipients of this
9 e-mail from Leslie Lowry. Do you see your name
10 there?
11 A. Yes.
12 Q. And this relates to the "8th Annual CS
13 Conference - Agenda & Speaker Information," is
14 that right?
15 A. That's what the subject says.
16 Q. Do you know who Leslie Lowry is?
17 A. I don't remember exactly what her role
18 was. I do remember having conversations and
19 talking with her.
20 Q. And she's with the Buzzeo Group, is
21 that right?
22 A. She -- at that time it looks like they
23 were Cegedim, but...
24 Q. Previously they were the Buzzeo Group,

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1 they changed names?
2 A. As I understand it, yes.
3 Q. And it attaches an agenda to the 8th
4 Annual Controlled Substances Conference, is that
5 right?
6 A. That's what it says.
7 Q. Okay. And if you look at the
8 conference schedule, you're listed as a speaker
9 at this conference, is that right?
10 A. Which page are we looking at?
11 Q. If we start toward the back, 495784.
12 A. It has me listed as a speaker.
13 Q. Okay. And then there you're listed --
14 your title on this is "Regulatory Specialist/DEA
15 Compliance, Henry Schein," correct?
16 A. That's what it says.
17 Q. Was that accurate?
18 A. I don't have reason to believe it
19 wasn't accurate.
20 Q. Okay. And it appears that you're on
21 two back-to-back panels, one from 4 to 4:45, and
22 then on the second panel on SOM compliance,
23 you're listed at the top of the following page
24 at 495785, is that right?

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1 A. I see that.
2 Q. Did you speak at this conference?
3 A. I don't remember it to be the 8th, but
4 I did speak at a Buzzeo conference, yes.
5 Q. Did you do it one time, or did you do
6 it more than once?
7 A. I remember speaking at one Buzzeo
8 conference.
9 Q. Could it have been more?
10 MS. MILLER: Object to form.
11 A. When you say "speak," you mean
12 present?
13 BY MR. ELSNER:
14 Q. Well, let's start with present. Did
15 you present at more than one conference?
16 A. I don't believe I presented at more
17 than one conference.
18 Q. Did you otherwise speak at more than
19 one conference?
20 A. While at the conference I've had
21 conversation with colleagues.
22 Q. I meant in a public way.
23 A. No.
24 Q. Was there a reason that you asked me

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1 whether you -- you seem to define my term of
2 presentation to speak or not, so was there a
3 reason that you did that?
4 MS. MILLER: Object to form.
5 A. I just want to make sure I answered
6 your question.
7 BY MR. ELSNER:
8 Q. And I want to make sure I've exhausted
9 your participation in these conferences. Did
10 you -- other than speak at this particular
11 conference, did you otherwise participate in the
12 conference in any other way than as an observer,
13 if you attended others?
14 MS. MILLER: Object to form.
15 A. Aside from speaking at this one
16 conference, that was the only time I can recall
17 being asked to contribute anything to the
18 conference.
19 BY MR. ELSNER:
20 Q. Who asked you to speak?
21 A. I don't remember who originally asked
22 me to speak.
23 Q. Do you know why they asked you to
24 speak? What did they tell you?

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1 MS. MILLER: Object to form.
2 A. I don't remember the specific
3 conversation where they asked me to speak.
4 BY MR. ELSNER:
5 Q. This is the 8th Annual Controlled
6 Substance Conference. Had you attended any
7 conferences before this conference where you
8 were asked to speak?
9 MS. MILLER: Object to form.
10 A. Not that I recall.
11 BY MR. ELSNER:
12 Q. So they asked you to speak at the very
13 first conference you attended, is that your
14 testimony?
15 MS. MILLER: Object to form.
16 A. That's not my testimony. I don't
17 recall if this was the first one that I went to.
18 BY MR. ELSNER:
19 Q. Did you have a -- when you attended
20 these conferences, did you keep any of the
21 materials from the conferences you attended?
22 MS. MILLER: Object to form.
23 A. Did I keep them for -- I'm sure I
24 brought materials home with me.

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1 BY MR. ELSNER:
2 Q. What would you do with them when you
3 brought them home?
4 MS. MILLER: Object to form.
5 BY MR. ELSNER:
6 Q. Did you save them at your office?
7 Would you save them at home? What would you do
8 with them?
9 A. I don't recall.
10 MS. MILLER: Object to form.
11 BY MR. ELSNER:
12 Q. Do you have a file of all these
13 materials at your office or at home?
14 MS. MILLER: Object to form.
15 A. Are you asking presently, or at the
16 time of the conference?
17 BY MR. ELSNER:
18 Q. Let's say at the time of the
19 conferences when you were at Henry Schein, did
20 you keep a file of the conferences that you
21 attended at your office or at home?
22 MS. MILLER: Object to form.
23 A. I don't recall.
24 BY MR. ELSNER:

<p style="text-align: right;">Page 42</p> <p>1 Q. What about today, do you have a file 2 of the conferences that you attend or the 3 conferences that you've spoken at either at your 4 office or at your home? 5 MS. MILLER: Object to form. 6 A. I know I have a copy of a 7 presentation. I don't recall having any other 8 documentation from previous conferences. 9 BY MR. ELSNER: 10 Q. So when I speak at a conference, a lot 11 of times I'll write out what I'm going to say 12 and sometimes I'll prepare a PowerPoint and I 13 have one of each. Did you do the same thing, or 14 do you just have a copy of the PowerPoint? 15 MS. MILLER: Object to form. 16 A. I honestly don't recall how I prepared 17 or what I prepared for speaking. 18 BY MR. ELSNER: 19 Q. Let me show you what we've marked as 20 Exhibit 3. 21 (Whereupon, CVS-Schiavo-3 was marked 22 for identification.) 23 BY MR. ELSNER: 24 Q. This is a copy of a PowerPoint</p>	<p style="text-align: right;">Page 44</p> <p>1 Schein, and it was produced in native, so we'll 2 get you the Bates number for that. 3 A. I'm sorry, can you just repeat the 4 question? 5 BY MR. ELSNER: 6 Q. I asked if you created this PowerPoint 7 presentation. 8 A. Can I look through it? 9 Q. Sure. 10 (Witness reviewing document.) 11 A. I recall giving input on it. 12 Q. What input? Did you assist in 13 providing the information to someone to create 14 the slides? 15 A. At some point I might have. 16 Q. Well, is this the PowerPoint you used 17 for your presentation at this conference? 18 MR. MONTMINY: Objection. Form. 19 A. I'm not sure if this is the exact 20 presentation. 21 BY MR. ELSNER: 22 Q. Does it look like it is? 23 MR. MONTMINY: Objection. Form. 24 BY MR. ELSNER:</p>
<p style="text-align: right;">Page 43</p> <p>1 presentation. Do you see on the top left-hand 2 side it says "8th Annual Controlled Substance 3 Conference"? Did I read that correctly? 4 A. I see that. 5 Q. And the title of the PowerPoint is 6 "The Challenge to 'Know Your Customer' and Best 7 Practices." Did I read that right? 8 A. You read that right. 9 Q. Okay. And then it lists "Craig 10 Schiavo, Regulatory Specialist/DEA Compliance, 11 Henry Schein, November 2010." Did I read that 12 right? 13 A. You read that correctly. 14 Q. Did you create this PowerPoint 15 presentation? 16 MR. MONTMINY: Objection. Form. 17 Counsel, could I ask, there's no Bates 18 numbers on this document, do you know where this 19 came from? 20 MR. ELSNER: Yes, we'll get you the 21 Bates number. 22 MS. MILLER: So this wasn't 23 produced -- 24 MR. ELSNER: It was produced by Henry</p>	<p style="text-align: right;">Page 45</p> <p>1 Q. Do you have reason to believe that 2 it's not? 3 MR. MONTMINY: Objection. Form. 4 A. I don't have reason to believe that 5 it's not, but I don't remember this whole 6 presentation. 7 BY MR. ELSNER: 8 Q. If you turn to Page 3 of the 9 presentation, there's an overview of Henry 10 Schein. It says "Henry Schein - Over 75 Years 11 of Quality Service." Do you see that? Did I 12 read that correctly? 13 A. You read that correctly. 14 Q. Okay. And the second bullet -- or the 15 first bullet, it says that "Henry Schein is the 16 largest distributor of healthcare products and 17 services to office-based practitioners." Did I 18 read that correctly? 19 A. You read that correctly. 20 Q. Was that true -- 21 MR. MONTMINY: Object to form. 22 BY MR. ELSNER: 23 Q. -- at the time? 24 A. It says it there.</p>

<p style="text-align: right;">Page 46</p> <p>1 Q. You didn't intend to put misleading 2 information in the PowerPoint, right? 3 MR. MONTMINY: Object to form. 4 MS. MILLER: Object. 5 BY MR. ELSNER: 6 Q. Correct? 7 A. I don't think I would put misleading. 8 Q. In the second bullet it says that 9 Henry Schein has 700,000 customers worldwide and 10 386,000 domestic customers, is that right? 11 MR. MONTMINY: Objection. Form. 12 A. I don't recall those numbers. 13 BY MR. ELSNER: 14 Q. That's the presentation that you gave 15 at this conference, though, is that right? 16 MR. MONTMINY: Objection. Form. 17 A. That's what it says in the deck. 18 BY MR. ELSNER: 19 Q. It then says that "Customers include 20 dental practices and laboratories, physician 21 practices, and animal health clinics." Is that 22 right? 23 MS. MILLER: Object to form. 24 A. That's what it says.</p>	<p style="text-align: right;">Page 48</p> <p>1 Schein, is that right? 2 MS. MILLER: Object to form. 3 A. I had seen that letter while at Henry 4 Schein. 5 BY MR. ELSNER: 6 Q. Okay. And that letter refers to, and 7 in your first bullet you quote, to "Design and 8 operate a system to disclose to the registrant 9 suspicious orders of controlled substances," and 10 then there's a citation. You understand that to 11 be a citation to the Controlled Substances Act, 12 is that right? 13 MR. MONTMINY: Object to form. 14 MS. MILLER: Object to form. 15 A. I know that's straight out of the CFR. 16 BY MR. ELSNER: 17 Q. Do you understand that that's part of 18 the Controlled Substances Act? 19 MS. MILLER: Object to form. 20 A. I know the CFR has regulations from 21 the DEA. 22 BY MR. ELSNER: 23 Q. Did you know that the Controlled 24 Substances Act had been in place since 1970?</p>
<p style="text-align: right;">Page 47</p> <p>1 BY MR. ELSNER: 2 Q. Is that consistent with your 3 understanding of Henry Schein's customer base? 4 MR. MONTMINY: Objection. Form, 5 outside the scope. 6 A. I do recall those being part of the 7 customer base. 8 BY MR. ELSNER: 9 Q. If you turn to the next page, the top, 10 the heading on the top is "Why Due Diligence Is 11 Required," is that right? 12 A. That's what it says. 13 Q. And it refers to the December, 2007 14 letter from the DEA, is that right? 15 A. That's what it says. 16 Q. This is a reference to the letter that 17 was authored by Joseph Rannazzisi to all 18 manufacturers and distributors of controlled 19 substances, is that right? 20 MS. MILLER: Object to form. 21 A. As I recall, that's the letter. 22 BY MR. ELSNER: 23 Q. Okay. And you had seen that letter, 24 obviously, before with your work at Henry</p>	<p style="text-align: right;">Page 49</p> <p>1 MS. MILLER: Object to form. 2 A. I didn't know the exact date. 3 BY MR. ELSNER: 4 Q. At the last bullet on this page, it 5 states "Suspicious orders include orders of 6 unusual size, orders deviating substantially 7 from a normal pattern, and orders of an unusual 8 frequency." Did I read that correctly? 9 MR. MONTMINY: Objection. Form. 10 A. You read that correctly. 11 BY MR. ELSNER: 12 Q. Okay. And this is also a quote from 13 the letter, the 2007 letter from the DEA 14 relating to reporting suspicious orders of 15 controlled substances, is that right? 16 MS. MILLER: Object to form. 17 A. Can you just repeat the question? 18 BY MR. ELSNER: 19 Q. This is a quote from the December, 20 2007 letter from the DEA, is that right? 21 MS. MILLER: Object to form. 22 A. I see the quotes around it. I don't 23 know if that's exactly from the letter. 24 BY MR. ELSNER:</p>

<p style="text-align: right;">Page 50</p> <p>1 Q. And the heading of this slide is the 2 December, 2007 letter from the DEA? 3 A. That's what it says. 4 Q. Do you understand that to be a quote 5 from the DEA letter? 6 MS. MILLER: Object to form. 7 A. I see what the title says. I see the 8 quote. I can't remember if I pulled that 9 directly out of the letter. 10 BY MR. ELSNER: 11 Q. Well, you're familiar with the letter, 12 right? You know that's what's in the letter 13 from the DEA in December of 2007? You've seen 14 it before? 15 MS. MILLER: Object to form. 16 A. I read the letter. I haven't read 17 that letter in a long time, I can't remember 18 every word in the letter, or every quote in the 19 letter. 20 BY MR. ELSNER: 21 Q. That was a pretty important part of 22 the letter, though, from the DEA in December of 23 2007, wasn't it? 24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 52</p> <p>1 this letter is to reiterate the responsibilities 2 of controlled substance manufacturers and 3 distributors to inform DEA of suspicious orders 4 in accordance with 21 CFR 1301.74," is that 5 right? 6 MS. MILLER: Object to form. 7 BY MR. ELSNER: 8 Q. Is that what it says? 9 A. That's what it says. 10 Q. Okay. And that's what you put in the 11 very first bullet in your presentation on 12 Page 4? 13 MR. MONTMINY: Objection. Form. 14 A. That looks to be what I put. 15 BY MR. ELSNER: 16 Q. Okay. And if you look at the last 17 bullet on your presentation on Page 4, 18 "Suspicious orders include orders of unusual 19 size, orders deviating substantially from a 20 normal pattern, and orders of unusual 21 frequency." Is that what you wrote? 22 MR. MONTMINY: Object to form. 23 MS. MILLER: Objection. Form. 24 A. That's what it says here.</p>
<p style="text-align: right;">Page 51</p> <p>1 MR. MONTMINY: Objection. 2 A. It was part of the letter. 3 BY MR. ELSNER: 4 Q. Here's the Exhibit 4 which is the 5 December 27, 2007 letter from the DEA. 6 (Whereupon, CVS-Schiavo-4 was marked 7 for identification.) 8 BY MR. ELSNER: 9 Q. This is the letter that was sent to 10 every manufacturer and distributor of controlled 11 substances, is that right? 12 MS. MILLER: Object to form. 13 A. That's how I understood the letter. I 14 don't know if I can confirm that was -- 15 BY MR. ELSNER: 16 Q. Is that what it says in the first 17 letter of the -- the first sentence of the 18 letter? It says "This letter is being sent to 19 every entity in the United States registered 20 with the Drug Enforcement" Agency -- sorry -- 21 "Administration to manufacture or distribute 22 controlled substances." Is that what it says? 23 A. That is what it says in the letter. 24 Q. The next sentence says "The purpose of</p>	<p style="text-align: right;">Page 53</p> <p>1 BY MR. ELSNER: 2 Q. And if you go to the last paragraph of 3 the DEA letter from December 27, 2007 in the 4 first line, the last paragraph there. Do you 5 see where I am, beginning "The regulation 6 specifically states"? Are you with me? 7 A. I'm with you. 8 Q. It says "The regulation specifically 9 states that suspicious orders include orders of 10 unusual size, orders deviating substantially 11 from a normal pattern, and orders of unusual 12 frequency." Is that what it says? 13 A. That's what it says. 14 Q. Okay. And that's what's quoted on 15 Page 4 of your presentation? 16 MS. MILLER: Object to form. 17 A. That looks to align. 18 BY MR. ELSNER: 19 Q. Turn to Page 5 of your presentation. 20 Actually, let me show you Exhibit 5 real quick. 21 (Whereupon, CVS-Schiavo-5 was marked 22 for identification.) 23 BY MR. ELSNER: 24 Q. This is MR 5.</p>

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1 MS. MILLER: What is the MR?

2 MR. ELSNER: It's our internal number

3 so she knows what exhibit.

4 MS. MILLER: For Motley Rice. I got

5 it.

6 BY MR. ELSNER:

7 Q. This is Exhibit 5 to the deposition.

8 This is a letter from the DEA dated

9 September 27, 2006.

10 Were you aware that the DEA had sent a

11 letter to distributors of controlled substances

12 the year prior to the December 27, 2007 letter?

13 MS. MILLER: Object to form.

14 Mike, was this produced in connection

15 with an e-mail, or is this the --

16 MR. ELSNER: This?

17 MS. MILLER: Yes.

18 MR. ELSNER: It was produced by CVS.

19 MS. MILLER: No, I understand. I

20 understand. But I'm just asking whether there

21 was a cover e-mail or if this is the whole

22 document.

23 MR. ELSNER: I don't know. I'm not

24 sure that it matters. I'm just referencing the

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1 DEA letter.

2 MS. MILLER: I just want to make sure

3 the document --

4 MR. ELSNER: She knows. That's why

5 she's asking.

6 BY MR. ELSNER:

7 Q. Could you refer to the letter? In

8 September -- the letter is dated September 27,

9 2006. Have you seen that?

10 MS. MILLER: Object to form.

11 A. I see the date on the letter.

12 BY MR. ELSNER:

13 Q. Okay. And have you ever seen this

14 letter before?

15 MS. MILLER: Object to form.

16 BY MR. ELSNER:

17 Q. Have you seen --

18 MS. MILLER: I object -- let me just,

19 I'm going to object based on attorney work

20 product to the extent the question calls for a

21 response that would reveal any documents shown

22 to the witness in prep, and instruct you not to

23 answer to the extent you would reveal any

24 communications during our time meeting in prep.

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1 BY MR. ELSNER:

2 Q. I can clarify this.

3 Were you aware when you gave this

4 presentation in the Buzzeo Group that the letter

5 that you were referencing, the December, 2007

6 letter from the DEA, was not the first letter

7 that had been sent to distributors of controlled

8 substances? Were you aware of that?

9 MS. MILLER: Object to form.

10 A. I don't recall at that time if I was

11 aware of that.

12 BY MR. ELSNER:

13 Q. Before you began preparation for

14 today's deposition in any fashion, while you

15 were working at CVS or while you were working at

16 Henry Schein, were you aware that the DEA had

17 sent a letter in September of 2006 to all

18 distributors of controlled substances?

19 MS. MILLER: Object to form.

20 Do you want to take a minute to look

21 at the letter?

22 A. Yeah, can I read the letter?

23 BY MR. ELSNER:

24 Q. You're welcome to look at it.

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1 (Witness reviewing document.)

2 MR. ELSNER: Why don't we go off the

3 record. If you're going to read the entire

4 letter into the record, I prefer we go off.

5 BY MR. ELSNER:

6 Q. Have you had enough time to look at

7 it?

8 MS. MILLER: I don't think we should

9 go off the record while the witness has an

10 opportunity to review the document. Are you

11 ready --

12 MR. ELSNER: Well, I have limited

13 time. If he's going to read every document in

14 full every time I ask a question, we're going to

15 go off the record.

16 MS. MILLER: He has a right to review

17 the document.

18 MR. ELSNER: He does. He can

19 generally familiarize himself with it. If you

20 prepped him on it a couple of days ago, he's

21 seen it before.

22 MS. MILLER: Object to form.

23 Objection to the statement on the record.

24 There's no statement by the witness, nor will

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1 there be, as to the documents he reviewed in
2 prep.
3 MR. ELSNER: I don't think he's
4 entitled to privilege here.
5 BY MR. ELSNER:
6 Q. Are you ready to answer the questions,
7 or do you need more time?
8 A. Specifically to your question of have
9 I seen this before?
10 Q. Yes.
11 A. I have not read the whole letter, but
12 this is not -- this doesn't look familiar to me.
13 Q. Okay. In the second sentence of the
14 letter it says "The purpose of this letter is to
15 reiterate the responsibilities of controlled
16 substance distributors in view of the
17 prescription drug abuse problem our nation
18 currently faces."
19 Were you aware that there is a
20 prescription drug abuse problem in the United
21 States?
22 MS. MILLER: Object to form.
23 MR. MONTMINY: Object to form.
24 A. Are you referring to in 2006 when I

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1 read --
2 BY MR. ELSNER:
3 Q. We can start in 2006 through today.
4 A. In 2006, I'm not sure if I was aware
5 of that.
6 Q. What about in 2007 through '12 while
7 you were working in DEA compliance at Henry
8 Schein?
9 MS. MILLER: Object to form.
10 MR. MONTMINY: Object to form.
11 A. I think I became aware that there are
12 people who have used drugs.
13 BY MR. ELSNER:
14 Q. When?
15 A. I'm not sure what you're asking.
16 Q. I'm asking are you aware, and if so
17 when, that there's a prescription drug abuse
18 problem that the nation currently faces? A
19 prescription drug abuse problem, not any type of
20 drug abuse.
21 MR. MONTMINY: Object to form.
22 MS. MILLER: Object to form.
23 A. Yeah, I'm aware that there are people
24 who abuse prescription drugs and other drugs and

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1 other substances. I'm aware of that.
2 BY MR. ELSNER:
3 Q. Are you aware that that was the reason
4 that the DEA was sending this letter in 2006 and
5 sending a follow-up letter in December of 2007?
6 Do you understand that that was the reason those
7 letters were being sent?
8 MS. MILLER: Object to form.
9 A. At the time of these letters, I don't
10 know.
11 BY MR. ELSNER:
12 Q. What about when you joined CVS, were
13 you aware of it then?
14 MS. MILLER: Object to form.
15 A. I'm aware that people abuse drugs,
16 that that happens.
17 BY MR. ELSNER:
18 Q. Are you aware that that's the purpose
19 behind the Controlled Substances Act and the
20 regulations that we're discussing?
21 MS. MILLER: Object to the form.
22 A. I don't think I know that's why they
23 wrote the Controlled Substances Act, no.
24 BY MR. ELSNER:

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1 Q. Were you aware that Congress had
2 expressly declared that the illegal distribution
3 of controlled substances has a substantial and
4 detrimental effect on the health and the general
5 welfare of the American people?
6 MS. MILLER: Object.
7 BY MR. ELSNER:
8 Q. Were you aware of that?
9 MS. MILLER: Object to form.
10 A. I'm not aware of that from Congress.
11 BY MR. ELSNER:
12 Q. Okay. This is in the third paragraph,
13 the last sentence, do you see where I'm at,
14 "Congress has expressly declared"?
15 A. I'm sorry, where is it?
16 Q. It's in the third paragraph in the
17 last sentence. It says "This responsibility is
18 critical, as Congress has expressly declared
19 that the illegal distribution of controlled
20 substances has a substantial and detrimental
21 effect on the health and general welfare of the
22 American people." Were you aware of that?
23 MS. MILLER: Object to form.
24 A. I see that written in the letter.

<p style="text-align: right;">Page 62</p> <p>1 This is my first time seeing this -- or 2 recalling seeing this letter. 3 BY MR. ELSNER: 4 Q. If you turn back to your presentation, 5 which is Exhibit 3, the PowerPoint presentation. 6 It has in the next -- on Page 5 there's a title 7 that says October 2009 Meeting with the DEA. Do 8 you see that? 9 A. On Page 5. 10 Q. The heading. 11 A. I see that. 12 Q. Okay. Did I read that accurately? 13 A. "October 2009 meeting with DEA." 14 Q. And this refers to a meeting that 15 Henry Schein had with the DEA in New York, is 16 that right? 17 MR. MONTMINY: Objection. Form. 18 A. I don't remember exactly when that 19 meeting took place, but I know that we had a 20 meeting with the DEA. 21 BY MR. ELSNER: 22 Q. Did you attend that meeting? 23 A. I attended that meeting. 24 Q. That was in Long Island?</p>	<p style="text-align: right;">Page 64</p> <p>1 with these materials in the DEA meeting? 2 MR. MONTMINY: Objection to form. 3 Outside the scope. 4 A. I remember getting a binder during 5 that meeting, or binders being provided. 6 BY MR. ELSNER: 7 Q. Where did you keep those at Henry 8 Schein, if you kept them? 9 MR. MONTMINY: Objection. Form, 10 outside the scope. 11 A. I don't remember where those were 12 maintained. 13 BY MR. ELSNER: 14 Q. Did you maintain them, or did somebody 15 else that attended the meeting take them with 16 them? 17 MR. MONTMINY: Objection. Form, 18 outside the scope. 19 A. I really don't recall. 20 BY MR. ELSNER: 21 Q. Who else was there from Henry Schein 22 other than you? 23 MR. MONTMINY: Objection. Form, 24 outside the scope.</p>
<p style="text-align: right;">Page 63</p> <p>1 A. Yes, that was on Long Island. 2 Q. And in the first bullet here, you -- 3 it states "Reiterated what was documented in the 4 December 2007 letter." That refers to the DEA 5 letter of December of 2007 that we were 6 discussing, is that right? 7 MS. MILLER: Object to form. 8 A. Although I don't specifically recall 9 that, it makes sense that that's what it's 10 referring to. 11 BY MR. ELSNER: 12 Q. Okay. And then next it says "Advised 13 what was expected of HSI as a distributor of 14 controlled substances." This is the DEA 15 advising Henry Schein as to what is expected as 16 a distributor of controlled substances. Was 17 that part of the discussion? 18 A. I don't exactly remember the full 19 conversation with the DEA, but that's what it 20 says there. 21 Q. Okay. It says here that there was a 22 binder provided by the DEA which contained 23 regulations, case studies, and ARCOS 24 information. Did the DEA provide Henry Schein</p>	<p style="text-align: right;">Page 65</p> <p>1 A. The only other individuals I 2 specifically recall being there were Len David 3 and Sergio Tejada. 4 Q. Who is Sergio Tejada? 5 MR. MONTMINY: Objection to form. 6 A. He was my manager at the time. 7 BY MR. ELSNER: 8 Q. In the last -- do you recall what was 9 in the binder other than what's listed here? 10 A. I don't recall all this being listed 11 being in the binder. I see it says it there. I 12 don't recall -- if this was it, I don't recall 13 what else was in there. 14 Q. In the last bullet it says "Put HSI on 15 notice." Is that what it says? 16 A. That is what it says. 17 Q. And that was to put Henry Schein on 18 notice of its obligations with respect to the 19 distribution of controlled substances, is that 20 right? 21 MR. MONTMINY: Objection. Form. 22 A. I'm not exactly sure what I meant by 23 that. 24 BY MR. ELSNER:</p>

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1 Q. You're not sure what you meant by "Put
2 HSI on notice"? Is there anything else they
3 could have put you on notice about that came up
4 in that meeting?
5 MS. MILLER: Object to form.
6 MR. MONTMINY: Object to form.
7 A. I don't recall.
8 BY MR. ELSNER:
9 Q. But that's what you wrote, is that
10 right?
11 MR. MONTMINY: Object to form.
12 A. Again, I don't know if I wrote that,
13 but that's what it says in here.
14 BY MR. ELSNER:
15 Q. That's in the presentation you gave,
16 is that right?
17 MS. MILLER: Object to form.
18 MR. MONTMINY: Object to form.
19 A. I don't know if this is the exact
20 presentation I gave, but that is in this
21 presentation that we're reviewing.
22 BY MR. ELSNER:
23 Q. You have no reason to believe that
24 it's not in the presentation that you gave to

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1 everyone that attended this conference, is that
2 right?
3 MR. MONTMINY: Objection. Form.
4 A. If you're saying that's what this is,
5 I don't have reason to believe that it isn't,
6 but I don't recall this being the exact
7 presentation.
8 BY MR. ELSNER:
9 Q. If you turn to the -- let me ask one
10 other question.
11 Who asked for the meeting? Did Henry
12 Schein ask for the meeting with the DEA, or did
13 the DEA ask to meet with Henry Schein?
14 MR. MONTMINY: Objection. Form,
15 outside the scope.
16 A. I believe the DEA asked for this
17 meeting.
18 BY MR. ELSNER:
19 Q. Okay. Do you understand why the DEA
20 asked for the meeting?
21 MS. MILLER: Object to form.
22 A. I don't know if I ever knew the exact
23 reason why.
24 BY MR. ELSNER:

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1 Q. If you turn to the next page of the
2 PowerPoint, this is "HSI SOM Implementation
3 Challenges." Is that what the heading says?
4 A. That is what the heading says.
5 Q. Okay. One of the challenges that
6 Henry Schein faced from a suspicious order
7 monitoring point of view was the amount of
8 customers that they had, which is listed in the
9 second bullet, right? It says "Amount of
10 customers (386,000 total/36,300 purchase
11 controls)."
12 What does purchase controls refer to?
13 MR. MONTMINY: Objection. Form,
14 compound.
15 A. I'm not exactly sure.
16 BY MR. ELSNER:
17 Q. One of the challenges that Henry
18 Schein faced in its suspicious order monitoring
19 program was the number of customers that it had,
20 is that correct?
21 MR. MONTMINY: Objection. Form,
22 outside the scope.
23 A. It's documented there as a challenge.
24 BY MR. ELSNER:

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1 Q. And it says it had a "Vast/complicated
2 customer base (Dental/Mental/Vet)," right?
3 MS. MILLER: Object to form.
4 MR. MONTMINY: Objection. Form.
5 A. That is what it says.
6 BY MR. ELSNER:
7 Q. In the fourth bullet, one of the
8 challenges in the SOM implementation at Henry
9 Schein was a "Lack of resources." Is that what
10 it says?
11 MR. MONTMINY: Objection. Form.
12 A. That is what it says.
13 BY MR. ELSNER:
14 Q. Lack of resources to do due diligence
15 on new accounts, correct?
16 MR. MONTMINY: Objection. Form.
17 A. That's what it says.
18 BY MR. ELSNER:
19 Q. To review pending accounts, is that
20 right?
21 MR. MONTMINY: Objection. Form,
22 outside the scope.
23 A. That's what it says.
24 BY MR. ELSNER:

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1 Q. And a lack of resources for site
2 visits, correct?
3 MR. MONTMINY: Objection. Form,
4 outside the scope.
5 A. That is what it says.
6 BY MR. ELSNER:
7 Q. Okay. One of the other implementation
8 challenges for the SOM program under
9 "Sales/Field Sales Representatives" in the
10 second bullet says a "Conflict of interest?"
11 What are you referring to there?
12 MR. MONTMINY: Objection. Form,
13 outside the scope.
14 A. I don't know exactly what I meant when
15 I put that.
16 BY MR. ELSNER:
17 Q. Was there a conflict of interest
18 between those who were trying to sell products
19 and obtain new customers for controlled
20 substances versus compliance?
21 MR. MONTMINY: Objection. Form,
22 outside the scope.
23 A. I guess there could be, but I guess --
24 I think that depends on the person, but again I

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1 don't know exactly what I was referring to here.
2 BY MR. ELSNER:
3 Q. Is that a potential conflict of
4 interest that could exist within a company
5 related to the monitoring for suspicious orders
6 of controlled substances?
7 MR. MONTMINY: Objection. Form.
8 A. I don't know. I know specifically at
9 Henry Schein that was not a concern of mine.
10 BY MR. ELSNER:
11 Q. But you wrote "Sales/Field
12 Representatives Conflict of Interest." Is that
13 what you wrote?
14 MR. MONTMINY: Object to form.
15 A. That's what this document says.
16 BY MR. ELSNER:
17 Q. It also says one of the implementation
18 challenges is "Cooperation from customers,"
19 correct?
20 MR. MONTMINY: Objection. Form.
21 A. That's what it says.
22 BY MR. ELSNER:
23 Q. What did you mean by that?
24 MS. MILLER: Objection. Form.

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1 A. Again, I don't know exactly what I
2 meant when I put this together.
3 BY MR. ELSNER:
4 Q. Well, did you have any difficulties in
5 the Henry Schein customers that you were
6 interacting with to obtain information from them
7 in order that you can conduct your due
8 diligence?
9 MR. MONTMINY: Objection. Form.
10 A. I can't remember any specific
11 examples, but every interaction with the
12 prescriber was different. Some were easier to
13 work with than others.
14 BY MR. ELSNER:
15 Q. You don't recall a single instance
16 where there was a client at Henry Schein where
17 you had requested information and they were not
18 cooperating fully with your request for the
19 information?
20 MR. MONTMINY: Objection. Form.
21 A. I can't recall a time where we had a
22 customer who -- I mean, I recall there being
23 difficult conversations with customers. I don't
24 recall any situations where I couldn't get what

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1 I needed to conduct due diligence.
2 BY MR. ELSNER:
3 Q. Do you recall conversations with
4 clients that were angry or frustrated that Henry
5 Schein had not distributed or sold a controlled
6 substance to them?
7 MR. MONTMINY: Objection. Form,
8 outside the scope.
9 A. I don't remember any specific
10 conversations.
11 BY MR. ELSNER:
12 Q. Do you recall that there were
13 physicians that Henry Schein was distributing
14 drugs to, some of whom were self-medicating?
15 MR. MONTMINY: Objection. Form,
16 outside the scope.
17 A. I don't recall any specific prescriber
18 that we knew that was self-medicating that we
19 would distribute to. I believe -- sorry.
20 BY MR. ELSNER:
21 Q. Sorry, I didn't mean to interrupt. I
22 thought you were done.
23 A. I believe our process or our policy
24 was not to distribute to self-medicating.

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1 Q. Why?

2 MR. MONTMINY: Objection. Form,

3 outside the scope.

4 A. That was our policy. I don't think I

5 wrote the policy.

6 BY MR. ELSNER:

7 Q. It's because the drugs are highly

8 addictive, right?

9 MR. MONTMINY: Objection. Form,

10 argumentative.

11 A. Not necessarily.

12 BY MR. ELSNER:

13 Q. You don't understand a controlled

14 substance to be potentially highly addictive?

15 MS. MILLER: Object to form.

16 MR. MONTMINY: Object to form.

17 A. I know that some controlled substances

18 can be addictive.

19 BY MR. ELSNER:

20 Q. If you turn to the next page in your

21 presentation under "Henry Schein's Suspicious

22 Order Monitoring" on Page 7. Do you see where

23 I'm at?

24 MR. MONTMINY: Objection. Form.

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1 A. I see where you're at.

2 BY MR. ELSNER:

3 Q. And there's a title there about

4 "Active Ingredients," is that right?

5 A. I see that.

6 Q. It says "All quantities and values

7 calculated and used in this system are at the

8 active ingredient level." What does that mean?

9 A. I believe that's looking at both brand

10 name and generic drugs if they had the same

11 active ingredient.

12 Q. So Henry Schein had a -- as a

13 component of its suspicious order monitoring

14 program was measuring drugs it was selling by

15 active ingredient, is that right?

16 MS. MILLER: Object to form.

17 A. Can you just ask that one more time,

18 please?

19 BY MR. ELSNER:

20 Q. So Henry Schein had as a component of

21 its suspicious order monitoring program a system

22 to measure drugs it was selling by active

23 ingredient?

24 MR. MONTMINY: Object to form.

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1 Outside the scope.

2 A. Drugs that were ordered, we took

3 active ingredient into account.

4 BY MR. ELSNER:

5 Q. So that you understood that if

6 somebody ordered two different drugs' names, but

7 they had the same active ingredient, you could

8 calculate those two together to understand the

9 total amount of that substance they were

10 ordering, isn't that the purpose?

11 MS. MILLER: Object to form.

12 MR. MONTMINY: Objection. Form.

13 A. I don't recall what the exact purpose

14 is, but it was to see for that active ingredient

15 how much was being ordered.

16 BY MR. ELSNER:

17 Q. And the only way to do that is to

18 measure by active ingredient, you couldn't do it

19 by drug name, correct?

20 MR. MONTMINY: Object to form.

21 MS. MILLER: Object to form.

22 A. I don't know that to be the case.

23 BY MR. ELSNER:

24 Q. When did Henry Schein have a system in

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1 place -- you gave this presentation in November

2 of 2010. When did Henry Schein have a system in

3 place to calculate drugs by active ingredient as

4 a component of its suspicious order monitoring

5 system?

6 MS. MILLER: Object to form.

7 MR. MONTMINY: Objection to form.

8 Outside the scope.

9 A. I don't recall when that happened.

10 BY MR. ELSNER:

11 Q. Well, it was in place in 2010, right?

12 MS. MILLER: Object to form.

13 A. I don't recall.

14 BY MR. ELSNER:

15 Q. That's what this presentation says,

16 right?

17 MS. MILLER: Object to form.

18 A. It looks like that's what this is

19 indicating.

20 BY MR. ELSNER:

21 Q. Do you know whether it was in the new

22 system that Henry Schein created or whether it

23 was in the existing system that Henry Schein

24 created when you arrived and took over these

<p style="text-align: right;">Page 78</p> <p>1 roles?</p> <p>2 MR. MONTMINY: Objection. Form,</p> <p>3 outside the scope.</p> <p>4 A. I don't recall what -- prior to me</p> <p>5 getting involved in this, I don't recall what</p> <p>6 the old system had or used, but that was a</p> <p>7 component of the new enhanced system that we</p> <p>8 had.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. It was a component of the newer</p> <p>11 enhanced system. And when did that come into</p> <p>12 place?</p> <p>13 MR. MONTMINY: Objection. Form,</p> <p>14 outside the scope.</p> <p>15 A. I don't recall.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Well, was the enhanced system the</p> <p>18 system that you were working on when you moved</p> <p>19 into a new role at Henry Schein related to DEA</p> <p>20 regulations in 2007?</p> <p>21 MR. MONTMINY: Objection. Form,</p> <p>22 outside the scope.</p> <p>23 A. I'm not sure I understand the</p> <p>24 question.</p>	<p style="text-align: right;">Page 80</p> <p>1 position in 2007 and when you were working on</p> <p>2 the enhanced system?</p> <p>3 MR. MONTMINY: Objection. Form.</p> <p>4 A. I really don't recall much about the</p> <p>5 old system, and I don't remember.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. Did you work on the enhanced system?</p> <p>8 A. I was part of a team that worked on</p> <p>9 the enhanced system.</p> <p>10 Q. Okay. What's your best estimate of</p> <p>11 when you were doing that work?</p> <p>12 MR. MONTMINY: Objection. Form.</p> <p>13 A. I don't remember. Sometime when I</p> <p>14 started the role.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. When you gave this presentation in</p> <p>17 November of 2010, was the enhanced system fully</p> <p>18 active or not?</p> <p>19 MR. MONTMINY: Objection. Form.</p> <p>20 A. I don't recall.</p> <p>21 MR. ELSNER: I'm going to mark this</p> <p>22 next document as Exhibit 6.</p> <p>23 (Whereupon, CVS-Schiavo-6 was marked</p> <p>24 for identification.)</p>
<p style="text-align: right;">Page 79</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. I'm trying to understand the time</p> <p>3 frame. You said that there was a SOM system,</p> <p>4 and then at Henry Schein there was an enhanced</p> <p>5 SOM system. So I'm trying to understand the</p> <p>6 time frame of when you were working on the</p> <p>7 enhanced SOM system. That's part of what you</p> <p>8 were working on, is that right?</p> <p>9 MR. MONTMINY: Object to form.</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. At some point during my role we worked</p> <p>12 on enhancing our SOM system.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. But at some time when, 2007, '8, '9?</p> <p>15 A. I really don't recall.</p> <p>16 Q. That's part of what you were working</p> <p>17 on was the enhanced system, though, when you</p> <p>18 moved into that position in 2007, is that right?</p> <p>19 MR. MONTMINY: Objection. Form.</p> <p>20 A. I don't recall what I was doing when I</p> <p>21 went into that position.</p> <p>22 BY MR. ELSNER:</p> <p>23 Q. Well, what's your best memory of what</p> <p>24 system was in place when you moved into that</p>	<p style="text-align: right;">Page 81</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. This is MR 268. Do you see the first</p> <p>3 page is a cover e-mail from you to three</p> <p>4 individuals? Who are the three individuals that</p> <p>5 you sent this e-mail to?</p> <p>6 A. Len David, Mike DiBello, and Sergio</p> <p>7 Tejada.</p> <p>8 Q. Who are they?</p> <p>9 A. Sergio was my manager at the time.</p> <p>10 Mike was -- I believe he was the director in</p> <p>11 compliance who Sergio reported up to. And I</p> <p>12 believe at the time Len David was our chief</p> <p>13 compliance officer who Mike reported up to.</p> <p>14 Q. This e-mail is dated October 20, 2009,</p> <p>15 is that right?</p> <p>16 A. That's what it says.</p> <p>17 Q. The subject of the e-mail is "DEA</p> <p>18 Meeting 10-21-09," is that right?</p> <p>19 A. That's what it says.</p> <p>20 Q. And it says "Len." This is you</p> <p>21 writing. "Len, Attached please find the handout</p> <p>22 we prepared for tomorrow's meeting with the</p> <p>23 DEA." Is that right?</p> <p>24 A. I don't recall writing this e-mail,</p>

<p style="text-align: right;">Page 82</p> <p>1 but that's what it says.</p> <p>2 Q. Okay. And it's sent by you to these</p> <p>3 individuals, correct?</p> <p>4 A. It appears to be.</p> <p>5 Q. And it attaches -- you see an</p> <p>6 attachment, "DEA Meeting 10-21-09" on the little</p> <p>7 image there on the first page, is that right?</p> <p>8 A. Yes. I see that.</p> <p>9 Q. It attaches a PowerPoint presentation</p> <p>10 dated October 21, 2009, is that right?</p> <p>11 A. That's what it says.</p> <p>12 Q. And this is the PowerPoint</p> <p>13 presentation you sent to the group?</p> <p>14 A. If this is that attachment, then it</p> <p>15 appears to be what I must have sent.</p> <p>16 Q. Did you create this PowerPoint</p> <p>17 presentation?</p> <p>18 A. I don't recall this PowerPoint,</p> <p>19 looking at the cover page.</p> <p>20 Q. On the second page there's an overview</p> <p>21 of Henry Schein's business, is that right?</p> <p>22 A. That's what it appears to be.</p> <p>23 Q. And if you turn to the third page of</p> <p>24 the PowerPoint, it lists under "Active</p>	<p style="text-align: right;">Page 84</p> <p>1 the record. I generally do not -- the</p> <p>2 conversation needs to be limited to privilege</p> <p>3 issues and not a conversation about the</p> <p>4 document.</p> <p>5 MS. MILLER: Understood. Understood.</p> <p>6 THE VIDEOGRAPHER: We're going off the</p> <p>7 record at 9:29 a.m.</p> <p>8 (Whereupon, a recess was taken.)</p> <p>9 THE VIDEOGRAPHER: We're back on the</p> <p>10 record at 9:42 a.m.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Mr. Schiavo, before we broke I was</p> <p>13 showing you the DEA PowerPoint presentation, and</p> <p>14 we were looking at -- and the date of this is</p> <p>15 October 21, 2009, and we were looking at the</p> <p>16 third page under Henry -- the topic heading of</p> <p>17 that page is "Henry Schein, Inc.'s Suspicious</p> <p>18 Order Monitoring."</p> <p>19 Do you see that?</p> <p>20 A. I see that.</p> <p>21 Q. Okay. And there's a topic here, it</p> <p>22 says "Active ingredients," and it reads "All</p> <p>23 quantities and values calculated and used in</p> <p>24 this system are at the active ingredient level."</p>
<p style="text-align: right;">Page 83</p> <p>1 Ingredients" -- do you see where I'm at?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. It says something strikingly</p> <p>4 similar, "All quantities and values calculated</p> <p>5 and used in this system are at the active</p> <p>6 ingredient level," is that right?</p> <p>7 MR. MONTMINY: Object to form.</p> <p>8 A. That's what it says. So I don't</p> <p>9 remember putting this document together, I don't</p> <p>10 remember if there was input from our legal team,</p> <p>11 so I would like to talk to my lawyer to see what</p> <p>12 I can discuss or -- I don't remember this</p> <p>13 document or the reason it being put together.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. Well, that's what's written in the</p> <p>16 PowerPoint presentation, right, that under</p> <p>17 Active Ingredients it says "All quantities and</p> <p>18 values calculated and used in this system are at</p> <p>19 the active ingredient level"? Is that what it</p> <p>20 says?</p> <p>21 MS. MILLER: Mike, let's take a break.</p> <p>22 He's asked to confer. He's asked to confer</p> <p>23 about privilege issues.</p> <p>24 MR. ELSNER: All right. We'll go off</p>	<p style="text-align: right;">Page 85</p> <p>1 Did I read that correctly?</p> <p>2 A. That is what it says.</p> <p>3 Q. Okay. So it's true, is it not, that</p> <p>4 as of October of 2009 Henry Schein had a</p> <p>5 suspicious order monitoring system in place that</p> <p>6 tracked drugs by active ingredient?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 A. That's the date of this presentation.</p> <p>9 That's what it says. I don't remember exactly</p> <p>10 when we started doing that, but that's what it</p> <p>11 says.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. Okay. Meeting with the DEA was an</p> <p>14 important event, right?</p> <p>15 MR. MONTMINY: Objection to form.</p> <p>16 A. We met with the DEA, they asked.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. But you recognize that to be an</p> <p>19 important event?</p> <p>20 MS. MILLER: Object to form.</p> <p>21 A. I'm not sure what you mean by</p> <p>22 important, but --</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. Well, the DEA regulated Henry Schein's</p>

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1 distribution of controlled substances, correct?
2 A. Henry Schein was a DEA registrant, and
3 there are certain regulations that as a
4 registrant we needed to follow.
5 Q. And if you don't follow those
6 regulations, one of the things that the DEA can
7 do is remove your license to sell those drugs,
8 correct?
9 MS. MILLER: Object to form.
10 A. We have a DEA registration. I know
11 there's penalties if you don't comply with
12 certain regulations.
13 BY MR. ELSNER:
14 Q. And one of those penalties could be
15 suspending or removing the registrant's license,
16 correct?
17 MS. MILLER: Object to form.
18 A. I guess there's various degrees of
19 penalties.
20 BY MR. ELSNER:
21 Q. But you understood those to be
22 included among them, correct?
23 MR. MONTMINY: Objection to form.
24 A. I mean, it's a DEA registration, so...

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1 BY MR. ELSNER:
2 Q. Well, do you know or don't know
3 whether the DEA could revoke someone's license?
4 MS. MILLER: Object to form.
5 A. It's a DEA license. That could be one
6 of the penalties.
7 BY MR. ELSNER:
8 Q. Do you know, or are you just guessing?
9 MS. MILLER: Object to form.
10 A. I know that if you don't follow
11 certain DEA regulations there's various degrees
12 of penalties.
13 BY MR. ELSNER:
14 Q. And it would be important for you,
15 wouldn't it, in meeting with the DEA that the
16 information that you told them was accurate,
17 right?
18 MR. MONTMINY: Objection to form.
19 A. I don't ever recall putting anything
20 together with the intent of being inaccurate.
21 BY MR. ELSNER:
22 Q. Because -- and you were careful,
23 weren't you?
24 MS. MILLER: Object to form.

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1 A. I try to be careful. But in terms of
2 this document, I don't remember putting it
3 together.
4 BY MR. ELSNER:
5 Q. And the document says that as of this
6 date in October of 2009 that Henry Schein had a
7 suspicious order monitoring system in place that
8 calculated quantities and values using the
9 active ingredient level, correct?
10 MR. MONTMINY: Objection. Form.
11 A. I see that it says that.
12 BY MR. ELSNER:
13 Q. Okay. And you understand that Henry
14 Schein did have such a system in place, is that
15 right?
16 MR. MONTMINY: Objection. Form.
17 A. I understand at some point that was an
18 aspect of the system.
19 BY MR. ELSNER:
20 Q. And you have no reason to believe that
21 this is inaccurate, that you told the DEA
22 something that was not actually truthful, is
23 that right?
24 MR. MONTMINY: Objection. Form.

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1 A. I don't recall nor do I -- would I
2 intend to be inaccurate to the DEA, but
3 specifically to this, I don't remember putting
4 this together, I don't specifically know exactly
5 what it was referring to, so...
6 BY MR. ELSNER:
7 Q. Here's what I'm trying to understand,
8 because given the way that your answers are to
9 me, it sounds like maybe you were telling the
10 DEA one thing that actually wasn't happening in
11 place at Henry Schein, is that true?
12 MR. MONTMINY: Objection to form.
13 BY MR. ELSNER:
14 Q. Or is it that you really, truthfully
15 try to make the information you told the DEA as
16 accurate as possible?
17 MR. MONTMINY: Objection. Form.
18 A. Speaking for me personally, I would
19 not try to be inaccurate.
20 BY MR. ELSNER:
21 Q. Okay. You would try to be truthful to
22 the DEA, right?
23 A. I can speak for myself, yes, I would
24 try to be truthful.

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1 Q. Okay. So if you turn two pages later
2 to the same DEA presentation, it says "Henry
3 Schein, Inc.'s Suspicious Order Monitoring" on
4 the top.
5 Do you see that?
6 A. I see that.
7 Q. Okay. And among the factors that the
8 model looks at at the end, it reads "The types
9 of indicators that the model will be looking for
10 are the customers monthly activity compared to
11 his: Six month average, Twelve month average,
12 Twelve month maximum, Twenty-four month maximum,
13 and Other various trending factors." Did I read
14 that correctly?
15 A. That is what it says.
16 Q. Okay. So is it true that Henry Schein
17 had a system in place that you were monitoring a
18 customer's monthly purchases of controlled
19 substances based on the prior 6-month and prior
20 12-month average?
21 MR. MONTMINY: Objection. Form.
22 A. At the time of this meeting, I cannot
23 remember exactly what the system was.
24 BY MR. ELSNER:

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1 Q. But this is what was written and
2 presented to the DEA, correct?
3 MR. MONTMINY: Objection. Form.
4 A. Based on that cover e-mail, this looks
5 like what was reviewed with the DEA.
6 BY MR. ELSNER:
7 Q. And you wouldn't try to tell the DEA
8 something that was untrue, right?
9 A. I would not intend to be untrue to the
10 DEA.
11 Q. Okay. So then it also says that the
12 system is looking at 12-month maximums and
13 24-month maximums, is that right?
14 MR. MONTMINY: Objection. Form.
15 A. That's what it says.
16 BY MR. ELSNER:
17 Q. Okay. And then it says "Other various
18 trending factors." What does other various
19 trending factors mean?
20 A. I don't recall what that's referring
21 to.
22 Q. Who at Henry Schein set the 12-month
23 max and the 24-month max?
24 MR. MONTMINY: Objection. Form,

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1 outside the scope.
2 MR. ELSNER: Can you explain that
3 objection? Because I don't understand it.
4 MR. MONTMINY: Sure. We can have a
5 running objection if you want, but essentially
6 he's here to speak in his personal capacity.
7 There was no notice provided to Schein that he
8 was a former employee and no opportunity to
9 prepare for this, and as of yet you haven't
10 asked a single question about CVS.
11 MR. ELSNER: Well, under the protocol
12 I don't need to separately notice it. I do need
13 to notify you if I intend to use a document he
14 hasn't seen before, which I haven't. And I
15 think this is all fair game. So I'm happy to
16 let you have a continuing objection to the use,
17 but I don't think we need to interrupt the
18 deposition with the same scope objections
19 throughout.
20 MR. MONTMINY: Okay.
21 BY MR. ELSNER:
22 Q. Can we go back to my question? I
23 asked you if you could explain to me what the
24 other various trending factors means.

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1 A. I don't recall what that's referring
2 to.
3 Q. Okay. And then I also asked who at
4 Henry Schein, to your knowledge, set the
5 12-month max and the 24-month maximums?
6 A. I don't recall who set that.
7 Q. Do you know what those maximums were?
8 A. I don't recall how that worked.
9 Q. You said that the suspicious order
10 monitoring system was only one component of the
11 due diligence program at Henry Schein. What
12 were the others for controlled substances?
13 A. I mean, at a high level it was -- we
14 had an algorithm, or algorithms, and we had a
15 due diligence process. Those were two main
16 parts.
17 Q. And the algorithm is a component of
18 the suspicious order monitoring system, right?
19 A. The algorithm or algorithms were part
20 of the process.
21 Q. Okay. And then so the other component
22 to that is due diligence based on orders that
23 were flagged or triggered by the suspicious
24 order monitoring system, correct?

<p style="text-align: right;">Page 94</p> <p>1 MR. MONTMINY: Objection. Form.</p> <p>2 A. That was part of the process.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. If you go two pages further under</p> <p>5 "Standard Operating Procedures/Policies," it</p> <p>6 says "Henry Schein Has Implemented and Enhanced</p> <p>7 Many of Our Policies and Procedures," and then</p> <p>8 it lists some things, including "Suspicious</p> <p>9 Order Monitoring Policy."</p> <p>10 Does this refresh your recollection</p> <p>11 that as of 2009 the enhanced system had been put</p> <p>12 into place at Henry Schein with respect to</p> <p>13 suspicious order monitoring?</p> <p>14 A. At the time of this meeting, I don't</p> <p>15 recall what was in place.</p> <p>16 Q. Is that what's written in the</p> <p>17 presentation?</p> <p>18 MR. MONTMINY: Object to form.</p> <p>19 A. It says that "Henry Schein Has</p> <p>20 Implemented and Enhanced Many of Our Policies</p> <p>21 and Procedures."</p> <p>22 BY MR. ELSNER:</p> <p>23 Q. Including the suspicious order</p> <p>24 monitoring program, correct?</p>	<p style="text-align: right;">Page 96</p> <p>1 A. I knew of a customer questionnaire.</p> <p>2 Q. Did you use it?</p> <p>3 A. Specifically the one that it's</p> <p>4 referring to, I don't know. I know we had a</p> <p>5 customer questionnaire that we used to guide due</p> <p>6 diligence.</p> <p>7 Q. Did you use it, the customer</p> <p>8 questionnaire?</p> <p>9 MR. MONTMINY: Objection. Form, asked</p> <p>10 and answered.</p> <p>11 A. At this time?</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. At any time.</p> <p>14 MR. MONTMINY: Same objection.</p> <p>15 A. At my time at Henry Schein, I had used</p> <p>16 a customer questionnaire to -- as a guideline</p> <p>17 for due diligence.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. And you would send that questionnaire</p> <p>20 out to doctors and others that were ordering</p> <p>21 controlled substances, is that right?</p> <p>22 A. Potentially.</p> <p>23 Q. And you'd review those responses?</p> <p>24 A. Either myself or someone else on the</p>
<p style="text-align: right;">Page 95</p> <p>1 A. That is one of the sub-bullets.</p> <p>2 Q. And then if you go two pages further,</p> <p>3 there's a "New Account Setup" page, and there's</p> <p>4 a list of items that you -- one page forward.</p> <p>5 Do you see where I'm at?</p> <p>6 A. Okay.</p> <p>7 Q. And this is the due diligence done for</p> <p>8 new account setups at Henry Schein as of 2009,</p> <p>9 is that right?</p> <p>10 A. Again, at this time I don't exactly</p> <p>11 recall what the processes were.</p> <p>12 Q. But that's what's in the presentation</p> <p>13 that you gave to the DEA?</p> <p>14 A. That is what's --</p> <p>15 MR. MONTMINY: Object to form.</p> <p>16 A. That is what's in this presentation.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Okay. And it included a customer</p> <p>19 questionnaire for every customer ordering</p> <p>20 controlled substances, is that right?</p> <p>21 A. I see that's what it says there.</p> <p>22 Q. And did you work with that customer</p> <p>23 questionnaire for customers while at Henry</p> <p>24 Schein?</p>	<p style="text-align: right;">Page 97</p> <p>1 team would review responses.</p> <p>2 Q. And on the last page under "Pain</p> <p>3 Management Clinics - Due Diligence Process," the</p> <p>4 third bullet, it reads "Mandatory full</p> <p>5 regulatory audit is required for final approval"</p> <p>6 to receive controlled substances, is that right?</p> <p>7 A. That's what it says.</p> <p>8 Q. Okay. And included "Inventory</p> <p>9 controls, Security systems/protocols, Interview</p> <p>10 with the doctor or owner, and a Comprehensive</p> <p>11 audit report including pictures of the facility</p> <p>12 and background information," is that right?</p> <p>13 MR. MONTMINY: Object to form.</p> <p>14 A. That is what it says.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Were you involved in this process at</p> <p>17 Henry Schein to collect the information for this</p> <p>18 mandatory full regulatory audit?</p> <p>19 A. Specifically at this time I don't</p> <p>20 fully recall what my role is or was with doing</p> <p>21 that.</p> <p>22 Q. What about later on at Henry Schein?</p> <p>23 A. At some point while I worked at Henry</p> <p>24 Schein that was part of my responsibilities, to</p>

<p style="text-align: right;">Page 98</p> <p>1 do due diligence.</p> <p>2 Q. And this was a component of Henry</p> <p>3 Schein's know your customer policies, is that</p> <p>4 right?</p> <p>5 MR. MONTMINY: Object to form.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. To collect this information?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 MR. MONTMINY: I'd like to re-assert</p> <p>10 my objection and make it clear that this witness</p> <p>11 does not represent Henry Schein in this</p> <p>12 deposition.</p> <p>13 MR. ELSNER: You can object. Speaking</p> <p>14 objections are not permitted.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Go ahead.</p> <p>17 A. Can you just repeat the question?</p> <p>18 Q. I had asked whether these -- reviewing</p> <p>19 these questionnaires and reviewing the</p> <p>20 information in the mandatory regulatory audits</p> <p>21 is the know your customer information that was</p> <p>22 collected at Henry Schein.</p> <p>23 MR. MONTMINY: Objection. Form.</p> <p>24 A. I know at some part -- at some point</p>	<p style="text-align: right;">Page 100</p> <p>1 MR. MONTMINY: Object to form.</p> <p>2 A. I see that written there. In</p> <p>3 reference to know your customer policy, I don't</p> <p>4 recall a know your customer policy that we had.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. But that's what's written here?</p> <p>7 A. "'Know Your Customer' questionnaire is</p> <p>8 sent to account" I see is what is written there.</p> <p>9 Q. Did Henry Schein have a know your</p> <p>10 customer policy in 2010?</p> <p>11 MR. MONTMINY: Objection. Form.</p> <p>12 A. I don't recall.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. If you turn to Page 13 of the</p> <p>15 PowerPoint presentation for the Buzzeeo</p> <p>16 conference, under -- the topic there is</p> <p>17 "Questionnaires," is that right?</p> <p>18 A. Questionnaires, yes.</p> <p>19 Q. Okay. And there are "3 categories of</p> <p>20 questionnaires developed," it reads. "Know your</p> <p>21 customer" is one, correct?</p> <p>22 A. I see that.</p> <p>23 Q. "Self Assessment Questionnaire" and</p> <p>24 "Extensive Site Visit Questionnaire," is that</p>
<p style="text-align: right;">Page 99</p> <p>1 these do look like pieces of information that we</p> <p>2 might look at for customers if doing due</p> <p>3 diligence.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. If you turn back to the PowerPoint</p> <p>6 presentation that you gave at the conference, on</p> <p>7 Page 10 under the --</p> <p>8 MR. MONTMINY: Object to the form of</p> <p>9 that statement.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Page 10 under "The Pend Process." Do</p> <p>12 you see where I'm at?</p> <p>13 A. Page 10, "The Pend Process."</p> <p>14 Q. Under "Know Your Customer" in the</p> <p>15 middle, do you see where I am?</p> <p>16 A. I see where you are.</p> <p>17 Q. It says "questionnaire is sent to</p> <p>18 account. Once received back and we are still</p> <p>19 not comfortable releasing the order, a more</p> <p>20 extensive questionnaire is sent out. If still</p> <p>21 not comfortable, a phone interview or site visit</p> <p>22 will be scheduled if necessary." Those are the</p> <p>23 components in part of the know your customer</p> <p>24 process at Henry Schein, is that correct?</p>	<p style="text-align: right;">Page 101</p> <p>1 right?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. I see where that's written.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. And it lists some sample questions at</p> <p>6 the bottom of the PowerPoint presentation,</p> <p>7 correct?</p> <p>8 A. I see that.</p> <p>9 Q. It includes "Do you accept medical</p> <p>10 insurance?" And "What percentage pay insurance"</p> <p>11 versus pay in cash? Is that one of the sample</p> <p>12 questions?</p> <p>13 A. "Cash, credit," yes.</p> <p>14 Q. Okay. And "Do you dispense...to</p> <p>15 out-of-state patients" is another inquiry,</p> <p>16 correct?</p> <p>17 A. I see that as one of the questions</p> <p>18 listed.</p> <p>19 Q. All right. On Page 14, the next page,</p> <p>20 it refers to site visits. Do you see that?</p> <p>21 A. "Site visits consist of." I see that.</p> <p>22 Q. Okay. And they're "Conducted on 'high</p> <p>23 risk' accounts and accounts that we are not</p> <p>24 comfortable with after initial due diligence,"</p>

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1 is that right?

2 MS. MILLER: Object to form.

3 A. I don't know if it was always the case

4 for just high-risk accounts, but I see where it

5 says here on high-risk accounts.

6 BY MR. ELSNER:

7 Q. Was it sometimes for other accounts,

8 not high-risk accounts?

9 A. I don't remember all the instances we

10 did site visits.

11 Q. The process, under item 2, could take

12 anywhere from 6 to 8 weeks to complete, is that

13 right?

14 MS. MILLER: Object to form.

15 A. I don't remember the exact time frame

16 it took to complete.

17 BY MR. ELSNER:

18 Q. That's what it says here, though,

19 right?

20 A. It says "Initially, the process could

21 took anywhere from six to eight weeks to

22 complete."

23 Q. Okay. And on the bottom it says,

24 "Site visits consist of," and it lists a number

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1 of things, including observing patients in the

2 waiting room. Is that one?

3 MR. MONTMINY: Objection. Form.

4 A. That's what it says.

5 BY MR. ELSNER:

6 Q. Cars in the parking lot?

7 A. That is what it says.

8 Q. What were you looking for for cars in

9 the parking lot, what kind of cars?

10 MR. MONTMINY: Object to form.

11 A. Could be anything from was it a full

12 parking lot to out of state license plates.

13 BY MR. ELSNER:

14 Q. Because out of state license plates

15 may be an indicator of diversion, is that right?

16 MS. MILLER: Object to form.

17 A. No, not necessarily.

18 BY MR. ELSNER:

19 Q. It could be a red flag?

20 MS. MILLER: Object to form.

21 A. It was one of the things that we

22 looked at. Could be nothing.

23 BY MR. ELSNER:

24 Q. Could be nothing, could be something,

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1 right?

2 MS. MILLER: Object to form.

3 BY MR. ELSNER:

4 Q. Yes, no?

5 A. I can't say. It's case-by-case.

6 Q. It's on the criteria that you listed,

7 is that right?

8 MS. MILLER: Object to form.

9 A. It's listed as one of the elements we

10 looked at.

11 BY MR. ELSNER:

12 Q. Okay. "Inventory reconciliations."

13 What's that?

14 A. I don't recall exactly what that is,

15 but some kind of inventory review.

16 Q. Inventory of what, the controlled

17 substances they had on hand?

18 MR. MONTMINY: Objection to form.

19 A. I think just inventory in general.

20 BY MR. ELSNER:

21 Q. The site visit also consisted of

22 security controls, is that right?

23 MR. MONTMINY: Objection. Form.

24 A. That's what it says.

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1 BY MR. ELSNER:

2 Q. Pictures?

3 MR. MONTMINY: Same objection.

4 A. It says that there.

5 BY MR. ELSNER:

6 Q. Observing the surrounding

7 neighborhood?

8 MR. MONTMINY: Object to form.

9 A. That's what it says.

10 BY MR. ELSNER:

11 Q. And "Recordkeeping/Protocols"?

12 MR. MONTMINY: Object to form.

13 BY MR. ELSNER:

14 Q. Correct?

15 MS. MILLER: Object to form.

16 A. That's what it says.

17 BY MR. ELSNER:

18 Q. These were in elements of the know

19 your customer or site visit review. They were

20 part of the presentation that you gave in this

21 conference, correct?

22 MR. MONTMINY: Objection. Form.

23 A. That is what it says in this document.

24 BY MR. ELSNER:

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1 Q. You said you had a copy of this
2 document. Where do you maintain a copy of this
3 presentation?
4 MR. MONTMINY: Objection. Form.
5 A. I don't know.
6 BY MR. ELSNER:
7 Q. Was it home, or is it at work?
8 MR. MONTMINY: Objection. Form.
9 A. I don't recall. I haven't seen this
10 in a long time.
11 BY MR. ELSNER:
12 Q. Do you recall telling me in the
13 beginning that you had a copy of this
14 presentation?
15 MR. MONTMINY: Objection. Form.
16 A. I recall saying I might have a copy.
17 BY MR. ELSNER:
18 Q. If you had a copy, where would it be?
19 MS. MILLER: Object to form.
20 MR. MONTMINY: Object to form.
21 A. I don't know.
22 MR. ELSNER: I'd ask that counsel
23 speak with the witness and see if they can
24 locate a copy of the presentation. If they can,

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1 if they produce it to us.
2 MS. MILLER: We can discuss it off the
3 record.
4 BY MR. ELSNER:
5 Q. When did you join CVS?
6 A. 2012.
7 Q. And what were you hired at CVS to do?
8 MS. MILLER: Object to form.
9 BY MR. ELSNER:
10 Q. As you understand it.
11 A. I know some of my early projects were
12 working on a compliance review program as well
13 as some pharmacy initiatives that the company
14 was working on.
15 Q. Your title was senior compliance
16 manager when you were hired in August of 2012,
17 is that right?
18 A. That sounds right.
19 Q. Did you replace someone when you were
20 hired by CVS, or was this a new position?
21 MS. MILLER: Object to form.
22 A. I believe the position that I was
23 going into, I don't believe I was replacing
24 someone in that position.

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1 BY MR. ELSNER:
2 Q. Okay. Why did you decide to leave
3 Henry Schein for CVS?
4 A. I don't recall all the reasons, but I
5 thought it was a good opportunity.
6 Q. Tell me about the process. Did you
7 see an advertisement and apply to it, or did you
8 send out a resume to CVS? How was it that you
9 came to be hired by CVS, as you understand it?
10 MS. MILLER: Object to form.
11 A. I believe I was contacted by CVS, and
12 had conversations through them reaching out.
13 BY MR. ELSNER:
14 Q. Who was it that contacted you from
15 CVS?
16 A. I don't remember exactly who it was.
17 It was someone from the talent acquisitions
18 department.
19 Q. And did they meet you at a conference,
20 or did they cold call you?
21 MS. MILLER: Object to form.
22 A. I'm not sure what caused them to reach
23 out.
24 BY MR. ELSNER:

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1 Q. Were you working at Henry Schein at
2 the time?
3 A. Yes.
4 Q. Had you met anyone from CVS as part of
5 your work in the area of compliance for Henry
6 Schein?
7 MS. MILLER: Object to form.
8 A. Not that I recall.
9 BY MR. ELSNER:
10 Q. Did they tell you that they were
11 looking to fill a particular position at CVS?
12 MS. MILLER: Object to form.
13 A. I believe they called me about a
14 specific position.
15 BY MR. ELSNER:
16 Q. What was your understanding of the
17 position that they called you about?
18 MS. MILLER: Object to form.
19 A. I don't recall.
20 BY MR. ELSNER:
21 Q. At the time you were in Greenville,
22 South Carolina, is that right?
23 A. Yes, I believe so.
24 Q. Were you hired by CVS Pharmacy or CVS

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1 Health? What entity of CVS hired you?
2 MS. MILLER: Object to form.
3 A. I don't recall. It was CVS.
4 BY MR. ELSNER:
5 Q. Who was your supervisor at CVS when
6 you were hired in August of 2012?
7 A. It was Tom Bourque.
8 Q. What was Tom Bourque's position?
9 A. At the time I believe he was the
10 director of regulatory compliance.
11 Q. Did he interview you for the position?
12 A. Yes.
13 Q. Did anyone else participate in the
14 interview process?
15 A. Yes.
16 Q. Who else?
17 A. I can recall meeting with talent
18 acquisition, and then other members of the, at
19 the time, the regulatory compliance team.
20 Q. What are their names?
21 A. Aside from Tom, I remember Karen
22 DiStefano.
23 Q. Any others?
24 A. And Susan Delmonico.

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1 Q. What is Susan Delmonico's position?
2 A. At the time of the interview?
3 Q. Yes.
4 A. I don't exactly recall what her role
5 was.
6 Q. Did you have any people who reported
7 to you when you were hired by CVS in August of
8 2012?
9 A. There was one person.
10 Q. Who was that?
11 A. Cassandra Castro.
12 Q. And what was her title and what were
13 her job responsibilities?
14 MS. MILLER: Object to form.
15 A. At that time I don't recall.
16 BY MR. ELSNER:
17 Q. What was she doing for you under your
18 supervision?
19 A. I think at the time I was hired, I
20 think she was also learning the company as I
21 was. And then I know one of her big
22 responsibilities was the regulatory review
23 program.
24 Q. Was anyone who was involved in the

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1 suspicious order monitoring system other than
2 Tom Bourque involved in any of -- let me strike
3 that.
4 When you were hired by CVS, did you
5 receive any training on the system in place for
6 suspicious order monitoring of controlled
7 substances at CVS?
8 A. Not that I recall.
9 Q. Did you meet with anyone to discuss
10 the suspicious order monitoring system in place
11 at CVS when you were first hired?
12 A. When you say first hired...
13 Q. In August of 2012 and through the
14 remainder of that year.
15 A. At some point before the end of the
16 year I do remember having contact with --
17 actually I don't know who ran the SOM at that
18 point so I don't -- I can't -- I don't know.
19 Q. Well, one of the tasks that you were
20 hired to perform by CVS was to create and
21 implement the distribution center's order
22 monitoring system, right?
23 MS. MILLER: Object to form.
24 A. Can you repeat that?

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1 BY MR. ELSNER:
2 Q. One of the tasks that you were hired
3 by CVS to perform was to create and implement
4 the distribution center's order monitoring
5 system, correct?
6 MS. MILLER: Object to form.
7 A. That was never relayed to me as my
8 responsibility during the interview process.
9 MR. ELSNER: Mark this next document
10 as the next exhibit.
11 (Whereupon, CVS-Schiavo-7 was marked
12 for identification.)
13 BY MR. ELSNER:
14 Q. This is Schiavo Exhibit 7. This is an
15 e-mail from you to Cassandra Castro dated
16 January 24, 2013, right? Do you see that on the
17 top of the e-mail?
18 A. I see that.
19 Q. Okay. And if you look to the third
20 paragraph -- sorry. Strike that.
21 If we go to the very top of the
22 e-mail, it says "Various Projects I Have Been
23 Involved in."
24 Do you see that?

<p style="text-align: right;">Page 114</p> <p>1 A. I see where it says that.</p> <p>2 Q. Okay. And then there's a list of</p> <p>3 bullets, right?</p> <p>4 A. Yes.</p> <p>5 Q. They're faint, though they're there, I</p> <p>6 think. If you go to the third bullet, it reads</p> <p>7 as one of the various projects that you've been</p> <p>8 involved in the "Creation and Implementation of</p> <p>9 our Distribution Center's Suspicious Order</p> <p>10 Monitoring System - In order for CVS to comply</p> <p>11 with 21 CFR 1301.74(b)," correct?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I see where it says that.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. And this is what you wrote, correct?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. I see my -- this e-mail is from me. I</p> <p>18 don't remember writing this.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. But that's what the e-mail states,</p> <p>21 correct?</p> <p>22 A. That's what it says.</p> <p>23 Q. So if one of your tasks was to create</p> <p>24 and implement the distribution center's order</p>	<p style="text-align: right;">Page 116</p> <p>1 effort before creating a new system to</p> <p>2 understand what system was in place?</p> <p>3 MS. MILLER: Object to form.</p> <p>4 A. I don't recall the extent of the</p> <p>5 effort. I knew there was a system in place.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. How did you know?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. I don't recall how I became aware.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. The system at this time was being</p> <p>12 operated out of the Indianapolis distribution</p> <p>13 center for CVS. Did you ever travel to</p> <p>14 Indianapolis in 2012 to meet with anyone to</p> <p>15 understand the system?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. No.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Did you ever have any conference calls</p> <p>20 with them in 2012 that you recall for an</p> <p>21 explanation of how the system was operating in</p> <p>22 2012?</p> <p>23 MS. MILLER: Object to form.</p> <p>24 A. I don't recall.</p>
<p style="text-align: right;">Page 115</p> <p>1 monitoring system, what effort did you undertake</p> <p>2 when you were hired by CVS to understand what</p> <p>3 current system was in place?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. I don't recall what steps I took to</p> <p>6 understand the current process they had in</p> <p>7 place.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Did you ever meet with John Mortelliti</p> <p>10 and sit down with him and ask him to explain to</p> <p>11 you how the suspicious order monitoring system</p> <p>12 was working at CVS?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I don't recall.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. What about Frank Devlin, did you ever</p> <p>17 sit down with him and discuss CVS's suspicious</p> <p>18 order monitoring system?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. I know that I spoke to Frank Devlin.</p> <p>21 I can't remember the specifics of any</p> <p>22 conversation.</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. Well, what effort -- did you make an</p>	<p style="text-align: right;">Page 117</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Prior to joining CVS, you did not have</p> <p>3 a great deal of experience in distribution or</p> <p>4 dispensing of controlled substances by</p> <p>5 pharmacies, correct?</p> <p>6 MS. MILLER: Objection to form.</p> <p>7 A. Not sure I understand the question.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Well, prior to joining CVS, you didn't</p> <p>10 have a lot of experience in working with</p> <p>11 pharmacies, right? Henry Schein's customer base</p> <p>12 were medical practitioners, dentists, and vets,</p> <p>13 right?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. And at some point I believe there was</p> <p>16 pharmacies.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Well, did you feel like you had a lot</p> <p>19 of pharmacy experience when you joined CVS?</p> <p>20 MS. MILLER: Object to form.</p> <p>21 A. I never felt like I didn't.</p> <p>22 BY MR. ELSNER:</p> <p>23 Q. If you look at the same e-mail, in the</p> <p>24 fourth bullet it references a conference that</p>

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1 you attended that was run by the DEA on 9/15.
2 Do you see that reference?
3 A. I do.
4 Q. Okay. And in the second sentence it
5 reads "Coming from a background of working for a
6 wholesale distributor, the conference was very
7 beneficial to see the 'hot topics' among the DEA
8 as they pertain to pharmacies and pharmacists."
9 Correct? Did I read that correctly?
10 MS. MILLER: Go ahead.
11 A. I see where it says that.
12 BY MR. ELSNER:
13 Q. The next sentence reads "After the
14 conference, I had a much clearer understanding
15 of a pharmacist's responsibility when filling
16 prescriptions and the process they are required
17 to go through in order to vet each prescription.
18 Also, the conference clearly laid out the
19 consequences for a pharmacist who does not
20 effectively use their professional judgment."
21 Did I read that correctly?
22 A. I see where I wrote that.
23 Q. And you attended the DEA conference
24 in -- on 9/15 in New York, is that right?

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1 A. I don't remember the date, but that's
2 what it says.
3 Q. Before we go to the conference, I just
4 want to ask a couple other questions.
5 When you were hired by CVS, did you
6 undergo any training procedures?
7 MS. MILLER: Object to form.
8 A. I'm not sure what you're referring to
9 in regards to --
10 BY MR. ELSNER:
11 Q. Well, did you have any training
12 presentations that you attended?
13 MS. MILLER: Object to form.
14 A. I don't recall any specific training.
15 I don't recall.
16 BY MR. ELSNER:
17 Q. There's no training on
18 responsibilities with controlled substances that
19 you were shown or given?
20 MS. MILLER: Object to form.
21 A. I don't recall.
22 BY MR. ELSNER:
23 Q. Did you receive any other training on
24 controlled substances when you joined CVS in

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1 2012?
2 MS. MILLER: Object to form.
3 A. I don't recall.
4 BY MR. ELSNER:
5 Q. Did you review the standard operating
6 procedures for suspicious order monitoring when
7 you joined CVS in 2012?
8 A. I don't recall.
9 Q. So you don't recall any training, any
10 manuals, any procedures, any effort that you
11 undertook to understand the current suspicious
12 order monitoring system at CVS in 2012, is that
13 your testimony?
14 MS. MILLER: Object to form.
15 Misstates testimony.
16 A. I'm saying I specifically don't
17 remember if there were or were not.
18 BY MR. ELSNER:
19 Q. What about since, have you received
20 any training at CVS in controlled substances?
21 A. I'm not sure what you mean by
22 training.
23 Q. Well, did you attend any presentations
24 at CVS? Has anyone given you any training

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1 manuals on controlled substances?
2 MS. MILLER: Object to form.
3 BY MR. ELSNER:
4 Q. Watched any videos about the
5 procedures?
6 MS. MILLER: Object to the form.
7 A. I don't know what you would constitute
8 as training. Have I seen videos on controlled
9 substances? Maybe.
10 BY MR. ELSNER:
11 Q. I'm talking about the procedures at
12 CVS to prevent for the diversion of controlled
13 substances. Are there any training manuals,
14 training videos, any information that you
15 reviewed to understand the system in place at
16 CVS to prevent the diversion of controlled
17 substances?
18 MS. MILLER: Object to form.
19 A. We have a number of policies and
20 procedures that, I don't know if you'd refer to
21 them as training, but we have policies and
22 procedures.
23 BY MR. ELSNER:
24 Q. No, I understand you have policies and

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1 procedures. I'm trying to -- is there anything
2 other than the policies and procedures? Is
3 there any document that explains the policies
4 and procedures, the importance of the policies
5 and procedures, the reasons behind the policies
6 and procedures with respect to controlled
7 substances that you reviewed or that someone
8 showed to you at CVS?
9 MS. MILLER: Object to form.
10 A. I don't specifically remember specific
11 trainings. We do have LEARNet trainings that
12 are available. I don't remember specifically.
13 BY MR. ELSNER:
14 Q. Have you ever gone to those?
15 MS. MILLER: Object to form.
16 A. I have taken LEARNet trainings.
17 BY MR. ELSNER:
18 Q. Is it something online?
19 A. Yes, you can take them online.
20 Q. How did you take them?
21 A. I don't recall if I took them all
22 online.
23 Q. Is online one of the options, and is
24 there another option, another format that you

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1 can take the LEARNet?
2 A. I believe there are options --
3 MS. MILLER: Object to form.
4 A. -- where you can take them not online.
5 BY MR. ELSNER:
6 Q. What were the topics that you took
7 these sessions on?
8 A. Are you talking in this time frame?
9 Q. Any time frame.
10 A. I have taken a lot of LEARNet courses.
11 I don't --
12 Q. Have any of those courses dealt with
13 the opioid epidemic in the United States?
14 MR. MONTMINY: Object to form.
15 MS. MILLER: Object to form.
16 A. I don't recall any training
17 specifically speaking to an opioid epidemic.
18 BY MR. ELSNER:
19 Q. Did any of the LEARNet programs deal
20 with the proper dispensing of controlled
21 substances that you took?
22 MS. MILLER: Object to form.
23 A. There are trainings that speak to
24 corresponding responsibility.

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1 BY MR. ELSNER:
2 Q. And did you take that LEARNet program?
3 A. During this time frame?
4 Q. Let's start with ever.
5 A. I know I've reviewed a training that
6 has corresponding responsibility.
7 Q. What was the date?
8 A. I don't recall.
9 Q. Well, after August, 2012, right?
10 A. I know that there are trainings out
11 there that I've seen after 2012.
12 Q. When did you -- when did CVS first put
13 in place these LEARNet sessions, to your
14 knowledge?
15 A. I don't recall.
16 Q. Are you on any kind of medication that
17 would impair your ability to remember? Did you
18 take any kind of medication today that would
19 impact your memory?
20 MS. MILLER: I'm going to object to
21 that question. That's an improper questioning
22 of the witness.
23 MR. ELSNER: It's not. I need to
24 know. That's a standard deposition question at

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1 every deposition.
2 BY MR. ELSNER:
3 Q. Are you on any medications today?
4 MS. MILLER: I object. It's an
5 inappropriate question.
6 BY MR. ELSNER:
7 Q. You can answer. She's raised an
8 objection.
9 A. I'm not on any medication.
10 Q. Thank you.
11 Would you agree with me that there's
12 an opioid crisis in the United States?
13 MS. MILLER: Object to form.
14 A. I know that there are people who abuse
15 drugs.
16 BY MR. ELSNER:
17 Q. Do you understand that the number of
18 people that -- well, do you know that there are
19 people who abuse prescription drugs including
20 opioids?
21 MS. MILLER: Object to form.
22 A. I am aware there are people who have
23 used opioids that have led in an overdose. I am
24 aware of that.

<p style="text-align: right;">Page 126</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Are you aware that the DEA and certain</p> <p>3 government officials have referred to this</p> <p>4 overdose that people are acquiring from opioids</p> <p>5 as an epidemic?</p> <p>6 MS. MILLER: Object to form.</p> <p>7 A. I am not aware that I've heard the</p> <p>8 term epidemic. I'm not aware that that is</p> <p>9 specifically to prescription medications.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. So you're not aware of whether there's</p> <p>12 an opioid epidemic in the United States today?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I think, like I said, I'm aware that</p> <p>15 there are people who abuse drugs.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Well, certainly there are people who</p> <p>18 abuse drugs. I'm asking a much more different</p> <p>19 and targeted question.</p> <p>20 Are you aware that the number of</p> <p>21 people that have abused opioids has risen to the</p> <p>22 point of reaching an epidemic proportion in the</p> <p>23 United States?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 128</p> <p>1 drugs with prescription, illicit, fentanyl-laced</p> <p>2 products.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. How would you -- what level of concern</p> <p>5 was there within CVS about the number of people</p> <p>6 overdosing on prescription opioids?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 A. I'm not sure I can speak to the level</p> <p>9 of concern.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Did you have a level of concern?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I'm not sure I understand the</p> <p>14 question.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Did you have a level of concern about</p> <p>17 the number of people that were overdosing as a</p> <p>18 result of taking prescription opioids in the</p> <p>19 United States?</p> <p>20 MS. MILLER: Object to form.</p> <p>21 A. A level of -- a level of concern. My</p> <p>22 focus while being at CVS was to work on the</p> <p>23 programs that I was working on and implement</p> <p>24 programs and comply with our processes.</p>
<p style="text-align: right;">Page 127</p> <p>1 MR. DAWSON: Objection.</p> <p>2 A. Well, you keep using the term</p> <p>3 "epidemic." I am aware that there are people</p> <p>4 who abuse prescription medications, illicit</p> <p>5 drugs such as heroin. I'm aware that people</p> <p>6 have overdosed on drugs.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. And you understand that's a huge</p> <p>9 problem in the United States?</p> <p>10 MS. MILLER: Object to form.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Do you agree with that or disagree</p> <p>13 with that?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. I would agree that any time that</p> <p>16 someone passes away that it's not something I'd</p> <p>17 want to see.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Well, for sure.</p> <p>20 But do you agree that it's a huge</p> <p>21 problem?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I'm not sure what you mean by "a huge</p> <p>24 problem." I'm aware that people overdose on</p>	<p style="text-align: right;">Page 129</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Why?</p> <p>3 MS. MILLER: Object.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. Why was CVS doing that?</p> <p>6 MS. MILLER: Object to form.</p> <p>7 A. Well, I know as a DEA registrant there</p> <p>8 are DEA regulations that as a company we need to</p> <p>9 comply with. But the decision on implementing,</p> <p>10 I mean, that's not -- that wasn't my decision.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Well, what was the purpose behind the</p> <p>13 DEA regulations? Did you understand that the</p> <p>14 DEA regulations were in place to prevent the</p> <p>15 diversion of controlled substances, including</p> <p>16 opioids?</p> <p>17 MS. MILLER: Object to form.</p> <p>18 A. I understand there are DEA</p> <p>19 regulations.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Do you understand the purpose behind</p> <p>22 the DEA regulations?</p> <p>23 MS. MILLER: Object to form.</p> <p>24 A. I can't say that I'm aware of the</p>

<p style="text-align: right;">Page 130</p> <p>1 reasoning behind why the DEA wrote the 2 regulations. 3 BY MR. ELSNER: 4 Q. No one at CVS or no one at Henry 5 Schein has ever told you that we need to make 6 sure that our systems concerning the 7 distribution and the sale of controlled 8 substances need to be robust because there is a 9 danger that these products get in the wrong 10 hands through diversion and cause overdoses? No 11 one ever told you that? 12 MS. MILLER: Object to form. 13 A. I don't recall any conversations 14 specifically. 15 BY MR. ELSNER: 16 Q. Did you make any effort to -- 17 MS. MILLER: Can you please just let 18 him finish his answer? 19 MR. ELSNER: I'm sorry. 20 MS. MILLER: Do you remember where you 21 were? 22 A. I just don't recall any specific 23 conversations. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 132</p> <p>1 A. I've seen it on the news, online, 2 newspaper. 3 Q. Do you get a newspaper at your house, 4 or do you read online newspapers? 5 A. I mean, I obtain news through 6 different sources. 7 Q. I'm trying to understand the sources. 8 Do you get the New York Times or the 9 Boston Globe, or do you get any local paper to 10 your home? 11 A. I believe I might get the Town of 12 Medway news or something. 13 Q. Okay. What's your best recollection 14 of any publication that you've read an article 15 about the opioid overdoses in the United States? 16 MS. MILLER: Object to form. 17 A. I can't remember a specific article 18 that I've read. 19 BY MR. ELSNER: 20 Q. Have you written any -- have you read 21 any books about opioid abuse? 22 MR. MONTMINY: Object to form. 23 A. Not that I recall. 24 BY MR. ELSNER:</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. Did you yourself make any effort to 2 determine the purpose behind the regulations 3 that you were trying to create systems to 4 protect against the diversion of controlled 5 substances? 6 MS. MILLER: Object to the form. 7 A. Can you repeat the question? 8 BY MR. ELSNER: 9 Q. Did you make any efforts to seek to 10 determine the purpose behind the regulations 11 that you were creating systems to prevent 12 diversion of controlled substances for? 13 MS. MILLER: Object to form. 14 A. I don't recall ever researching a 15 regulation as to the reason why it was written. 16 BY MR. ELSNER: 17 Q. Have you ever read anything about 18 opioid abuse problem in the United States? 19 MS. MILLER: Object to form. 20 A. I can't specifically recall anything, 21 but I've read about articles or about people 22 overdosing. 23 BY MR. ELSNER: 24 Q. In what kind of publications?</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. Seen any movies about it? 2 MS. MILLER: Object to form. 3 A. I have seen movies in which characters 4 have overdosed on medications or drugs. 5 BY MR. ELSNER: 6 Q. Opioids? 7 MS. MILLER: Object to form. 8 A. Specifically, I don't recall a 9 specific movie that comes to mind. But I've 10 seen movies where part of the plot are people 11 die of drug overdoses. 12 BY MR. ELSNER: 13 Q. Do you understand that more people 14 died of a drug overdose from a prescription drug 15 than died in a car accident in recent years? 16 MS. MILLER: Object to form. 17 A. I don't believe I'd heard that before. 18 BY MR. ELSNER: 19 Q. Did you know that overdose from 20 prescription drugs has been the leading cause of 21 death in the United States? 22 MS. MILLER: Object to form. 23 A. I don't believe I specifically knew 24 that.</p>

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1 BY MR. ELSNER:
2 Q. I'm going to show you what we marked
3 as Exhibit 8.
4 (Whereupon, CVS-Schiavo-8 was marked
5 for identification.)
6 BY MR. ELSNER:
7 Q. This is the PowerPoint presentation
8 from the DEA. This is MR 3. This is from
9 September of 2012 in Long Island, New York.
10 This is the conference that you attended, the
11 DEA conference that you attended. And this
12 presentation was put together by Joseph
13 Rannazzisi who is the deputy assistant
14 administrator of the DEA.
15 Do you see that on the first page?
16 MR. MONTMINY: Object to form.
17 A. I see that.
18 BY MR. ELSNER:
19 Q. I want you to turn to the fourth page
20 of the document, and it says "Commonly Abused
21 Controlled Pharmaceuticals."
22 Do you see that?
23 A. I see where it says that.
24 Q. And you're aware, are you not, that

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1 hydrocodone was one of the commonly abused
2 pharmaceuticals?
3 MS. MILLER: Object to form.
4 A. I am aware that hydrocodone is one of
5 the drugs that someone can abuse.
6 BY MR. ELSNER:
7 Q. Are you aware that it's a commonly
8 abused controlled substance?
9 MS. MILLER: Object to form.
10 A. I don't know what you mean by common,
11 but I'm aware that it can be abused.
12 BY MR. ELSNER:
13 Q. As well as OxyContin and oxycodone,
14 would you agree?
15 MS. MILLER: Object to form.
16 A. I am aware that those are drugs that
17 can be abused.
18 BY MR. ELSNER:
19 Q. Okay. I'm going to have you turn --
20 MR. ELSNER: Can we go off the record
21 for about 15 seconds?
22 THE VIDEOGRAPHER: We're going off the
23 record at 10:38 a.m.
24 (Whereupon, a recess was taken.)

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1 THE VIDEOGRAPHER: We're back on the
2 record at 10:55 a.m.
3 BY MR. ELSNER:
4 Q. Mr. Schiavo, I'm going to ask you to
5 go to the next tab which you now have in front
6 of me from this PowerPoint that the DEA
7 presented at the conference you attended, and it
8 describes the "Economic Impact - the Cascading
9 Effect." That's the title of the slide, is that
10 correct?
11 MS. MILLER: Object to form.
12 A. That is what the slide says.
13 BY MR. ELSNER:
14 Q. It says that in 2006 the estimated
15 cost in the United States from non-medical use
16 of prescription opioids was \$53.4 billion. Did
17 I read that correctly?
18 A. I see where it says that.
19 Q. And it lists five drugs on the bottom
20 which account for two-thirds of the economic
21 burden.
22 Do you see that?
23 A. I don't see where it says that they
24 account for two-thirds, but I see drugs listed

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1 at the bottom.
2 There, it says it, yes.
3 Q. And those drugs include OxyContin,
4 oxycodone, hydrocodone, among others, correct?
5 MS. MILLER: Object to form.
6 A. It looks like there's two other drugs
7 listed than you named.
8 BY MR. ELSNER:
9 Q. And it includes all of those, correct?
10 A. That's what it says.
11 MS. MILLER: Object to form.
12 BY MR. ELSNER:
13 Q. And these are drugs that were
14 dispensed by CVS pharmacies, correct?
15 MS. MILLER: Object to form.
16 A. I did not -- I didn't work for CVS in
17 2006. I can't answer that.
18 BY MR. ELSNER:
19 Q. Were these drugs that were dispensed
20 by CVS in 2012 when you joined CVS?
21 MS. MILLER: Object to form.
22 A. I can't say for sure that all of these
23 were.
24 BY MR. ELSNER:

<p style="text-align: right;">Page 138</p> <p>1 Q. Hydrocodone is among the drugs that 2 were distributed by CVS when you joined them in 3 2012, correct? 4 MS. MILLER: Object to form. 5 A. Hydrocodone was one of the drugs that 6 pharmacies dispensed in 2012. 7 BY MR. ELSNER: 8 Q. And it was also a drug that CVS 9 distributed to its own pharmacies in 2012, 10 correct? 11 MS. MILLER: Object to form. 12 A. I do believe some of our distribution 13 centers distributed hydrocodone to pharmacies. 14 BY MR. ELSNER: 15 Q. Okay. If you turn to the next tab, 16 the next Post-it, it says "Emergency Room Data 17 2004 to 2009." 18 Do you see that? 19 A. I see that. 20 Q. Okay. And it reads the increase of 21 98.4 percent of ER visits attributable to 22 pharmaceuticals alone. 23 Did I read that correctly? 24 A. I see where it says that.</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. MILLER: Object to form. 2 A. I see the top bullet. 3 BY MR. ELSNER: 4 Q. Now we're talking about, we're 5 breaking it down, "Prescription Drugs most 6 frequently implicated: Opiates/Opioids pain 7 relievers," and it lists hydrocodone products as 8 124.5 percent increase. 9 Do you see that? 10 MS. MILLER: Object to form. 11 A. I see where it lists hydrocodone and 12 124.5 percent increase. 13 BY MR. ELSNER: 14 Q. Okay. If you go to the next sticky, 15 there's been an increase and rise in poisoning 16 deaths from opioids and analgesics, correct, 17 from 1999 through 2007? Do you see that? 18 MS. MILLER: Object to form. 19 A. I see the chart. 20 BY MR. ELSNER: 21 Q. Okay. Were you aware prior to this 22 conference that there was this rising death -- 23 poisoning deaths from opioids? 24 MS. MILLER: Object to form.</p>
<p style="text-align: right;">Page 139</p> <p>1 Q. Okay. And beneath that it says, 2 "Prescription drugs most frequently implicated: 3 Opiates/opioids pain relievers," and it lists 4 "Oxycodone products 242.2 percent increase," 5 correct? Is that what it says? 6 MS. MILLER: Object to form. 7 A. It looks like that's what it says. 8 BY MR. ELSNER: 9 Q. Between 2004 and 2009 for hydrocodone 10 there was 124.5 percent increase in ER visits, 11 correct? 12 MS. MILLER: Object to form. 13 BY MR. ELSNER: 14 Q. Is that what it says? 15 MS. MILLER: Object to form. 16 A. Can you reread what part you were 17 reading. 18 BY MR. ELSNER: 19 Q. So we're talking about emergency room 20 data from 2004 to 2009, right? 21 A. Yes. 22 Q. And we're talking about increases in 23 ER visits attributable to those pharmaceuticals. 24 Are you with me?</p>	<p style="text-align: right;">Page 141</p> <p>1 A. I don't believe I was aware of this 2 exact data in this chart. 3 BY MR. ELSNER: 4 Q. Okay. If you go to the next tab, the 5 title is "Number of Forensic Cases, 2001 to 6 2010." 7 Do you see that? 8 MS. MILLER: Object to form. 9 A. I see that on the slide. 10 BY MR. ELSNER: 11 Q. And you see in 2001 there's sort of -- 12 if you just look at the hydrocodone tab, which 13 is the green. Are you with me? In 2010 it's 14 slightly over 10,000, correct? 15 MS. MILLER: Object to form. 16 BY MR. ELSNER: 17 Q. In 2001, slightly over 10,000? 18 A. It looks like that's what the chart is 19 indicating. 20 Q. Okay. And that by 2010 for 21 hydrocodone there's been a 253 percent increase 22 in forensic cases, correct? 23 MS. MILLER: Object to form. 24 A. I see that on the chart. I am not</p>

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1 sure what's meant by "forensic cases," though.
 2 I'm not sure what this is saying.
 3 BY MR. ELSNER:
 4 Q. Okay. Were you aware that there had
 5 been a 250 percent increase in hydrocodone
 6 overdoses from 2001 to 2010 before this
 7 conference?
 8 MS. MILLER: Object to form.
 9 A. Yeah, I'm not exactly sure what
 10 forensic cases mean, and I'm not sure, so I
 11 can't say I know what that 253 percent --
 12 BY MR. ELSNER:
 13 Q. You don't know that forensic cases
 14 refers to an overdose?
 15 MS. MILLER: Object to form.
 16 BY MR. ELSNER:
 17 Q. What's your understanding of the word
 18 forensic?
 19 A. Not exactly sure what the definition
 20 is.
 21 Q. Forensic refers to death.
 22 MS. MILLER: Object to form.
 23 BY MR. ELSNER:
 24 Q. You don't know?

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1 A. I don't know the exact definition.
 2 Q. If you go to the next sticky, sort of
 3 a cover page, an introductory page, it reads
 4 that the most commonly prescribed prescription
 5 medicine is hydrocodone/acetaminophen.
 6 Did I read that correctly?
 7 A. That looks to be what it says.
 8 Q. Okay. Were you aware prior to this
 9 conference that hydrocodone/acetaminophen was
 10 the most commonly prescribed prescription
 11 medicine in the United States?
 12 MS. MILLER: Object to form.
 13 A. I don't recall if I knew that.
 14 BY MR. ELSNER:
 15 Q. If you go to the next tab, which is on
 16 the very next page, the title is the "Top Five
 17 Prescription Drugs Sold in the United States."
 18 Do you see that? Is that what the title says?
 19 A. That is what the title says.
 20 Q. Okay. And do you see that hydrocodone
 21 is significantly higher than all the other
 22 drugs, prescription drugs, sold in the United
 23 States?
 24 MS. MILLER: Object to form.

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1 A. I don't know exactly what's meant by
 2 sold. And I do see that the hydrocodone line is
 3 higher than other lines.
 4 BY MR. ELSNER:
 5 Q. Well, what do you believe sold means?
 6 A. In terms of --
 7 MS. MILLER: Object to form.
 8 A. In the terms of this slide, I'm not
 9 sure.
 10 BY MR. ELSNER:
 11 Q. Were you aware that there were more
 12 prescriptions filled and sales of hydrocodone
 13 than there were for Lipitor in the United
 14 States?
 15 MS. MILLER: Object to form.
 16 A. Just based on this chart saying
 17 "Prescription Drugs Sold," which I'm not --
 18 still not sure exactly what sold means, the
 19 hydrocodone bar is larger than the Lipitor bar.
 20 BY MR. ELSNER:
 21 Q. Do you know whether CVS sold more
 22 hydrocodone than it did Lipitor?
 23 MS. MILLER: Object to form.
 24 A. I don't know if I would -- I wouldn't

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1 know that.
 2 BY MR. ELSNER:
 3 Q. Given the large economic costs as a
 4 result of opioid overdoses, and the large number
 5 of forensic cases related to overdoses of
 6 hydrocodone, and the significantly higher
 7 numbers of hydrocodone drugs sold in the United
 8 States, did it concern you that there needed to
 9 be a robust system at CVS to prevent diversion?
 10 MS. MILLER: Object to form.
 11 A. In terms of this chart, I don't know
 12 what this is showing me because I don't know
 13 what sold is referring to.
 14 And in terms of having a system at
 15 CVS, I knew we needed to have policies or
 16 procedures. I knew we had to have a system.
 17 BY MR. ELSNER:
 18 Q. Did you know that hydrocodone was one
 19 of the most widely diverted and abused drugs in
 20 the United States?
 21 MS. MILLER: Object to form.
 22 A. I don't know if I knew it was one of
 23 the most highly diverted drugs.
 24 BY MR. ELSNER:

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1 Q. Do you have an understanding of what
2 the most highly diverted drugs are in the United
3 States that would be implicated by your
4 suspicious order monitoring system at CVS?
5 MS. MILLER: Object to form.
6 A. So during this time frame I don't know
7 if I had an idea on what they were.
8 BY MR. ELSNER:
9 Q. What about after this time frame when
10 you were at CVS from 2012 on?
11 MS. MILLER: Object to form.
12 A. I don't know if I know all of the
13 highest diverted, all of the drugs, I don't
14 know.
15 BY MR. ELSNER:
16 Q. Who asked you to attend this
17 conference in New York?
18 MS. MILLER: Object to form.
19 BY MR. ELSNER:
20 Q. If anyone.
21 A. I don't recall.
22 Q. Did someone at CVS ask you to go, or
23 did you decide to go on your own?
24 A. I don't recall.

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1 Q. I'm going to show you what we've
2 marked as Schiavo Exhibit 9.
3 (Whereupon, CVS-Schiavo-9 was marked
4 for identification.)
5 BY MR. ELSNER:
6 Q. This is your year-end review for 2012.
7 It's MR 269. Do you see the document?
8 A. MR 260 --
9 Q. I'm just asking do you recognize this
10 as your year-end review from 2012. It says
11 "Craig Schiavo" on the left-hand side.
12 Do you see that?
13 A. I see it says my name, and I see it
14 says "Year-End Review."
15 Q. You wrote a year-end review while you
16 worked at CVS in 2012 and '13, is that right?
17 MS. MILLER: Object to form.
18 A. I don't remember writing this, but it
19 says this is my year-end review.
20 BY MR. ELSNER:
21 Q. Okay. If you turn to Page 8 of 11,
22 the very last paragraph there, it reads
23 "Attended a conference on 9/15 run by the DEA in
24 New York to stay up on current issues as they

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1 relate to the DEA and pharmacies." Is that what
2 you wrote?
3 A. Again, I don't remember writing this
4 document, but that's what it says.
5 Q. Okay. And then it next says "Coming
6 from a background of working for a wholesale
7 distributor, the conference was very beneficial
8 to see the 'hot topics' among the DEA as they
9 pertain to pharmacies and pharmacists." Is that
10 what you wrote?
11 A. I don't remember writing this, but
12 that's what it says.
13 Q. Okay. And in the last sentence of the
14 paragraph, it reads "Also, the conference
15 clearly laid out the consequences for a
16 pharmacist who does not effectively use their
17 professional judgment." Is that what you wrote?
18 MS. MILLER: Object to the form.
19 A. Again, I don't remember writing this,
20 but that's what it says.
21 BY MR. ELSNER:
22 Q. If you turn to page right before that,
23 the very -- at the top "Various Projects I Have
24 Been Involved in."

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1 Do you see that?
2 A. "Various Projects I Have Been Involved
3 in."
4 Q. Page 7 of 11, is that what it says?
5 A. I see where it says that.
6 Q. Okay. And it says at the very bottom
7 of the page, the very last paragraph there, it
8 says "Creation." Do you see where I'm at?
9 A. Yes.
10 Q. "Creation and implementation of our
11 Distribution Center Suspicious Order Monitoring
12 System" - In order for CVS to comply with 21 CFR
13 1301.74(b), we are required to build and operate
14 a system to track suspicious orders of
15 controlled substances from our CVS Retail
16 Pharmacies."
17 Do you see that?
18 MS. MILLER: Object to form.
19 A. And I don't remember writing this, but
20 I see it's written.
21 BY MR. ELSNER:
22 Q. And then you wrote "By implementing
23 this system along with the appropriate policies
24 and procedures, we will mitigate the risk of

<p style="text-align: right;">Page 150</p> <p>1 potentially receiving substantial fines from the 2 DEA and possibly the suspension of our DEA 3 registration in both our distribution centers 4 and individual retail pharmacies." Is that what 5 you wrote? 6 MS. MILLER: Object to form. 7 A. I don't remember writing this, but 8 that's what this says. 9 BY MR. ELSNER: 10 Q. And then it says "To date, I have 11 contributed to the following." And the first 12 one is "Identify gaps in the current SOM system 13 that needed to be addressed when developing the 14 new system." Did I read that correctly? 15 A. That's what it says. 16 MS. MILLER: Object to form. 17 BY MR. ELSNER: 18 Q. And this is a review that you wrote 19 and presented to your boss at CVS, is that 20 right? 21 MS. MILLER: Object to form. 22 A. I don't remember writing this, but 23 this is my year-end review, it appears. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Okay. And he's your boss at this 2 time? 3 A. At this time Tom is my boss. 4 Q. Okay. And it was also sent to Dean 5 Vanelli, is that right? 6 A. It appears to be. 7 Q. Okay. And to Aaron Burtner? 8 A. Aaron is on here. 9 Q. Okay. Who is Aaron Burtner? 10 A. Part of Aaron's role I knew to be as 11 one of the analysts for the suspicious order 12 monitoring system. 13 Q. That was in place in November of 2012, 14 right? 15 MS. MILLER: Object to form. 16 BY MR. ELSNER: 17 Q. That was his position in 2012? 18 A. I don't know exactly what Aaron's 19 position was in 2012. 20 Q. Did you know he was working on the 21 suspicious order monitoring system? 22 MS. MILLER: Object to form. 23 A. I believe I knew that Aaron, part of 24 his responsibility had to do with suspicious</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. You don't have any reason to doubt 2 that it is, right? 3 A. I don't have a reason to doubt this is 4 my year-end review. 5 Q. You don't think anyone at CVS took 6 over your name and did this in secret, do you? 7 MS. MILLER: Object to form. 8 A. This document has my name on it, it 9 says "Year-End Review." I don't have any reason 10 to believe this is not my year-end review. 11 MR. ELSNER: Okay. Mark this next 12 document as Exhibit 10. 13 (Whereupon, CVS-Schiavo-10 was marked 14 for identification.) 15 BY MR. ELSNER: 16 Q. This is an e-mail from you dated 17 November 29, 2012. It's MR 79. Is that right? 18 A. I see that. 19 Q. Okay. And you send this to a variety 20 of people including your boss, Tom Bourque, is 21 that right? 22 A. I don't remember sending this e-mail, 23 but Tom is on this e-mail, and it says it's from 24 me.</p>	<p style="text-align: right;">Page 153</p> <p>1 order monitoring. 2 BY MR. ELSNER: 3 Q. Okay. It says "Team, As discussed on 4 our call earlier today, please find the attached 5 documents." And the first item is "List of 6 opportunities (My notes) from our meeting on 7 November 27th." Is that what it says? 8 A. That is what it says. 9 Q. Okay. That's what you wrote? 10 A. I don't remember writing this, but the 11 e-mail seems to be from me, and that's what's 12 written there. 13 Q. So yes? 14 A. I don't remember writing this. 15 Q. And attached is a document entitled 16 "Opportunities - Current SOM Process." 17 Do you see that? 18 A. "Opportunities - Current SOM Process," 19 yes. 20 Q. Let me ask you one question. When you 21 came back from the DEA conference that you 22 attended, other than writing the review in your 23 report, did you discuss what you heard at the 24 conference with anyone at CVS?</p>

<p style="text-align: right;">Page 154</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. Again, I don't remember writing the</p> <p>3 review, and I don't remember specific</p> <p>4 conversations I had around the conference.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Was this -- did you attend any other</p> <p>7 DEA conferences while you were employed by CVS?</p> <p>8 A. I don't recall any other conferences</p> <p>9 in 2012.</p> <p>10 Q. I didn't ask about 2012. I said at</p> <p>11 any time at CVS.</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. The only conference I can recall was</p> <p>14 in the last year.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. What was that on?</p> <p>17 MS. MILLER: Object to form.</p> <p>18 A. It was a controlled substance</p> <p>19 conference.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Where was it held?</p> <p>22 A. Savannah, Georgia.</p> <p>23 Q. Did you save the materials from the</p> <p>24 conference?</p>	<p style="text-align: right;">Page 156</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. But that's what you wrote, right,</p> <p>3 "Lack of understanding as to" the</p> <p>4 "characteristics make up the current Algorithm."</p> <p>5 Is that what you wrote?</p> <p>6 MS. MILLER: Object to form.</p> <p>7 A. I see that written there, but I'm</p> <p>8 not -- I don't see it specified who I'm talking</p> <p>9 about.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Well, these are notes of the meeting,</p> <p>12 right?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I don't recall what meeting this is in</p> <p>15 reference to.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. These are the opportunities to fix the</p> <p>18 current SOM program, right? And one of the</p> <p>19 opportunities that you list that could be</p> <p>20 improved upon was that there's a lack of</p> <p>21 understanding as to the characteristics of the</p> <p>22 algorithm that ran the suspicious order</p> <p>23 monitoring program, right?</p> <p>24 MS. MILLER: Object to form.</p>
<p style="text-align: right;">Page 155</p> <p>1 A. I don't recall.</p> <p>2 Q. Going back to this document, were your</p> <p>3 notes from the meeting of November 27th, 2012,</p> <p>4 it says "Opportunities -- Current SOM Process."</p> <p>5 This memo is meant to describe opportunities to</p> <p>6 change or fix the current SOM process at CVS, is</p> <p>7 that right?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. So again, I don't -- I don't remember</p> <p>10 drafting this document, especially for the</p> <p>11 purposes of it being my notes from a meeting. I</p> <p>12 see where it says that on the previous. I don't</p> <p>13 recall what specific my intentions were in</p> <p>14 drafting this document.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Would you agree with me that at this</p> <p>17 time in November of 2012 that there was a lack</p> <p>18 of understanding as to what characteristics make</p> <p>19 up the current algorithm for the suspicious</p> <p>20 order monitoring system at CVS?</p> <p>21 MS. MILLER: Object to form.</p> <p>22 A. I see what the first line says, but I</p> <p>23 can't say that there was a lack of understanding</p> <p>24 by everyone at CVS.</p>	<p style="text-align: right;">Page 157</p> <p>1 A. Again, I don't recall why I put this</p> <p>2 document together. But I don't recall there</p> <p>3 ever being a time where I thought the current</p> <p>4 process needed to be fixed.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Well, do you agree that there was an</p> <p>7 opportunity -- you didn't think there was any</p> <p>8 opportunity to fix anything at all about the</p> <p>9 current SOM system as it existed in November of</p> <p>10 2012 at CVS?</p> <p>11 MS. MILLER: Object to form.</p> <p>12 A. I don't recall ever an instance where</p> <p>13 the system needed to be fixed.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. It was perfect?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. I believe it met our obligations.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. That wasn't the question.</p> <p>20 You said you didn't think it needed to</p> <p>21 be fixed. Was it perfect?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I'm not sure what you mean by</p> <p>24 "perfect," but it met -- my understanding was it</p>

<p style="text-align: right;">Page 158</p> <p>1 met our obligations. 2 BY MR. ELSNER: 3 Q. You spent in fall of 2012, through all 4 of 2012, all of 2013 into 2014 creating an 5 enhanced and new SOM program at CVS. That was 6 part of your responsibilities, correct? 7 MS. MILLER: Object to form. 8 A. I can't recall exactly how long I 9 spent working on suspicious order monitoring. I 10 had other responsibilities. My role was never 11 to fix a system. I played a part on a team that 12 was working on enhancing or implementing a new 13 system. 14 BY MR. ELSNER: 15 Q. And it took two years to do that, 16 right? 17 MS. MILLER: Object to form. 18 A. I don't recall how long it took. 19 BY MR. ELSNER: 20 Q. It wasn't a quick fix, right? 21 MS. MILLER: Object to form. 22 A. Again, I don't recall us ever doing a 23 project to fix our system. We were looking to 24 enhance or implement a new system.</p>	<p style="text-align: right;">Page 160</p> <p>1 Q. Then it says "Stores won't get their 2 orders in time if all the checks are completed 3 up front," right? 4 MS. MILLER: Object to form. 5 A. I see that's what the document says. 6 I'm not exactly sure what that's referring to. 7 BY MR. ELSNER: 8 Q. What is CAP underneath that in little 9 Roman Numeral i, C-A-P? 10 MS. MILLER: Object to form. 11 A. I don't recall what CAP -- 12 BY MR. ELSNER: 13 Q. You don't know what CAP is? 14 A. I don't recall. 15 Q. MAX/MIN? 16 A. I don't recall MAX/MIN. 17 Q. Well, there's a maximum/minimum in the 18 amount of drugs, controlled substances, that can 19 be shipped to a pharmacy, is that right? 20 MS. MILLER: Object to form. 21 A. I don't recall what that MAX/MIN is 22 referring to. 23 BY MR. ELSNER: 24 Q. You don't know that maximum and</p>
<p style="text-align: right;">Page 159</p> <p>1 BY MR. ELSNER: 2 Q. And it took two years to do that, 3 right? 4 MS. MILLER: Object to form. 5 A. I don't recall how long it took. 6 BY MR. ELSNER: 7 Q. You next list that -- it says "Can we 8 do all checks up front?" And then it says 9 "Stores won't get orders in time if all checks 10 are completed up front." 11 Under the current system if you did 12 all the checks up front, the stores wouldn't get 13 their orders in time, is that correct? 14 MS. MILLER: Object to form. 15 A. I see the bullet says "Can we do 16 checks up front?" I'm not exactly sure what 17 that's referring to. 18 BY MR. ELSNER: 19 Q. But that's the question you asked, can 20 we do all the checks up front, right? 21 MS. MILLER: Object to form. 22 A. I don't remember drafting this 23 document. That is what it says. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 161</p> <p>1 minimum is one of the elements of a suspicious 2 order monitoring system? You had one at Henry 3 Schein that did that, right? 4 MR. MONTMINY: Object to form. 5 MS. MILLER: Object to form. 6 A. I see this document says "MAX/MIN." 7 I'm not sure what that's referring to. 8 BY MR. ELSNER: 9 Q. No idea? 10 MS. MILLER: Object to form. 11 A. I'm not sure what that process is or 12 what that is. 13 BY MR. ELSNER: 14 Q. Under number 3 it says "Aaron" -- and 15 this is Aaron Burtner, right? 16 A. Aaron was on the e-mail that I think 17 this attachment was in, so it might be Aaron 18 Burtner. 19 Q. Could be any other Burtner? 20 MS. MILLER: Object to form. 21 BY MR. ELSNER: 22 Q. Is there any other Aarons that you're 23 familiar with at CVS that were working on the 24 suspicious order monitoring program?</p>

<p style="text-align: right;">Page 162</p> <p>1 A. Not that I recall.</p> <p>2 Q. Okay. So "Aaron reviews orders pushed</p> <p>3 through after it is reviewed. Aaron gets all</p> <p>4 the following information: CAP, Algorithm</p> <p>5 Output, Minimum/Maximum."</p> <p>6 What does it mean that Aaron reviews</p> <p>7 the orders pushed through after it is reviewed?</p> <p>8 A. I'm not sure what I was referring to</p> <p>9 there.</p> <p>10 Q. Aaron was in charge of the suspicious</p> <p>11 order monitoring system, and he was based in</p> <p>12 Indianapolis at this time, correct?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I don't recall exactly what Aaron's</p> <p>15 role was especially at this time.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Were you aware of anyone else that was</p> <p>18 reviewing suspicious orders in the suspicious</p> <p>19 order monitoring system in CVS at this time in</p> <p>20 2012?</p> <p>21 A. I don't recall the individuals that</p> <p>22 were on the SOM team at that time.</p> <p>23 Q. Why is it important to do a due</p> <p>24 diligence review up front as opposed to after?</p>	<p style="text-align: right;">Page 164</p> <p>1 MS. MILLER: Object to form.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Is that what you wrote?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. I see what's written there, but I</p> <p>6 don't know what "pushed through" means. I don't</p> <p>7 know what that's referring to.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Under number 4 it says "By doing the</p> <p>10 'CAPS' we are modifying the order and not</p> <p>11 looking at the actual order from the store."</p> <p>12 What does that mean?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I don't recall what CAPS are, and I</p> <p>15 don't recall ever a time that we weren't looking</p> <p>16 at actual orders from the store. I don't know</p> <p>17 what that means.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. I believe CAPS is modifying the actual</p> <p>20 order that comes into the store, putting it in a</p> <p>21 different form for someone else to review rather</p> <p>22 than looking at the actual order of the</p> <p>23 pharmacy. Were you aware that was a potential</p> <p>24 weakness of the SOM system?</p>
<p style="text-align: right;">Page 163</p> <p>1 MS. MILLER: Object to form.</p> <p>2 Mischaracterizes the document.</p> <p>3 MR. ELSNER: I'm not talking about the</p> <p>4 document.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Why is it important to do your reviews</p> <p>7 up front as opposed to after?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. I'm not sure what up front is. And</p> <p>10 looking at the document, it's a question mark,</p> <p>11 so I don't know if I'm even stating that, it's a</p> <p>12 question. And I don't know what up front is</p> <p>13 referring to.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. In number 3 it says that "Aaron is</p> <p>16 reviewing orders pushed through after it is</p> <p>17 reviewed," meaning he gets all the information</p> <p>18 afterwards, not up front, correct?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. I don't know what up front means, so I</p> <p>21 can't say what you're saying is accurate.</p> <p>22 BY MR. ELSNER:</p> <p>23 Q. You wrote "Aaron reviews orders pushed</p> <p>24 through after it is reviewed," right?</p>	<p style="text-align: right;">Page 165</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. I don't recall CAPS being a weakness</p> <p>3 of a system that we had.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. You wrote "By doing the 'CAPS' we are</p> <p>6 modifying the order and not looking at the</p> <p>7 actual order from the store." That's what you</p> <p>8 wrote, correct?</p> <p>9 MS. MILLER: Object to form.</p> <p>10 A. That's what this document says. I</p> <p>11 don't recall drafting this document, and I don't</p> <p>12 recall exactly what it's referring to.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. One of the other weaknesses of the SOM</p> <p>15 system in November of 2012 is that if a store</p> <p>16 ordered a controlled substance and it was</p> <p>17 cleared at the beginning of the month, then the</p> <p>18 store could order additional controlled</p> <p>19 substances in the same month without triggering</p> <p>20 the suspicious order monitoring system, isn't</p> <p>21 that right?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I don't -- I don't see where that --</p> <p>24 you state that's a weakness, nor do I recall</p>

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1 that ever being a weakness of the system.
2 BY MR. ELSNER:
3 Q. Well, these are opportunities to
4 enhance the system, correct, to fix it, right?
5 MS. MILLER: Object to form.
6 BY MR. ELSNER:
7 Q. Is that what it says in the title?
8 MS. MILLER: Object to form.
9 A. The document says opportunities.
10 Opportunities to me don't mean fixes, they're
11 opportunities. This was during a time where we
12 were looking to enhance our system, so these are
13 my thoughts on paper for enhancement.
14 BY MR. ELSNER:
15 Q. Opportunities to make it better,
16 right?
17 MS. MILLER: Object to form.
18 A. They're opportunities that we were
19 talking about at the time we were putting
20 together and developing and enhancing a new
21 system.
22 BY MR. ELSNER:
23 Q. To make the system better, right?
24 MS. MILLER: Object to form.

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1 BY MR. ELSNER:
2 Q. They weren't opportunities to make it
3 worse, right? You weren't talking about ways to
4 make it weaker, were you?
5 MS. MILLER: Object to form.
6 A. I mean, we were looking to make the
7 process better. But at the time it's not that
8 our process was broken, I felt we had a good
9 process. This is an opportunity for
10 enhancement.
11 BY MR. ELSNER:
12 Q. And one of those opportunities that
13 you wrote is if an "order is cleared on the 1st
14 of the month and cleared, and store then orders
15 again that month it won't be looked at." Is
16 that what you wrote?
17 MS. MILLER: Object to form.
18 A. Again, I don't remember drafting this
19 document. That's what it says. But I don't
20 ever remember that being the case.
21 BY MR. ELSNER:
22 Q. But that's what the document says, is
23 that right?
24 A. That is what this document says.

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1 Q. And you'd agree with me that that is a
2 weakness in the system, would you not?
3 MS. MILLER: Object to form.
4 BY MR. ELSNER:
5 Q. If the store orders in the beginning
6 of the month and then it has a subsequent order
7 that's not looked at or looked at using old
8 data, that's a weakness in the system, correct?
9 MS. MILLER: Object to form.
10 A. No.
11 BY MR. ELSNER:
12 Q. You don't think so?
13 MS. MILLER: Object to form.
14 A. No, not necessarily.
15 BY MR. ELSNER:
16 Q. What's your title at CVS today?
17 A. Director, business compliance officer.
18 Q. And what are your responsibilities as
19 the director of the business compliance?
20 A. My focus is on our retail business,
21 and focusing on new laws and regulations.
22 Q. And you don't think as the director of
23 business compliance that it would be a weakness
24 if a store ordered some controlled substance in

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1 the beginning of the month and then had a
2 subsequent order in that same month, that that
3 information reviewed is not based on a current
4 review of the information but on an old review
5 of that information?
6 MS. MILLER: Object to form.
7 A. I see what the document says. That's
8 not how I remember the process being.
9 BY MR. ELSNER:
10 Q. But that's what you wrote, right?
11 MS. MILLER: Object to form.
12 A. That's what this document says. I
13 don't recall writing this document.
14 BY MR. ELSNER:
15 Q. Fair to say that your memory about
16 what was happening in 2011 is better based on
17 your notes of that meeting taken the day of or
18 the next day than your memory sitting here
19 today?
20 MS. MILLER: Object to form.
21 BY MR. ELSNER:
22 Q. Is that true?
23 MS. MILLER: Object to form.
24 A. Again, I don't remember drafting this

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1 document, I don't remember the meeting that this
2 is referring to, I don't recall this being the
3 process that we followed.
4 BY MR. ELSNER:
5 Q. But your notes of that meeting would
6 be a more accurate recitation of what was
7 discussed than your memory of it today since you
8 have no memory of the meeting, right?
9 MS. MILLER: Object to form.
10 A. This is a document of opportunities.
11 I don't remember writing it, I don't remember
12 that being the process, nor do I know if what is
13 in here is accurate since this is not what I
14 recall the process being.
15 BY MR. ELSNER:
16 Q. That wasn't my question.
17 My question is that what you wrote,
18 your notes of that meeting, would be more
19 accurate as to what took place than your memory
20 of it sitting here today when you've testified
21 that you have no memory of attending the
22 meeting, correct?
23 MS. MILLER: Object to form.
24 BY MR. ELSNER:

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1 Q. What's more accurate, your memory now
2 or the notes you took of the meeting then?
3 MS. MILLER: Object to form.
4 A. I don't recall this being my notes
5 from the meeting, or a meeting.
6 BY MR. ELSNER:
7 Q. But you sent them around to people as
8 your notes of the meeting, right?
9 MS. MILLER: Object to form.
10 BY MR. ELSNER:
11 Q. Sir, it's a basic question. What's
12 more reliable, the notes you took at the time,
13 or your memory of those events when you've
14 testified already that you don't remember
15 writing the memo and you don't even remember the
16 meeting?
17 MS. MILLER: Object to form.
18 BY MR. ELSNER:
19 Q. You would agree with me that your
20 notes at the time are more accurate, right?
21 MS. MILLER: Object to form.
22 A. I don't remember writing this
23 document, and I can't confirm this is my notes
24 from the meeting or a meeting.

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1 BY MR. ELSNER:
2 Q. It's potentially your e-mail that was
3 produced to us by CVS. You're denying that it
4 took place. You're denying the e-mail exists
5 and the notes took place. Is that what you're
6 doing?
7 MS. MILLER: Object to form.
8 Misstates his testimony.
9 MR. ELSNER: It does not.
10 A. I'm not denying there's an e-mail. I
11 see the e-mail.
12 BY MR. ELSNER:
13 Q. And you see that these are your notes,
14 correct?
15 A. I can't say that these are my notes.
16 I don't remember writing this document.
17 Q. Sir, I'm entitled to an answer to the
18 question.
19 What's more accurate in your mind,
20 your memory of a meeting that you can't remember
21 or your actual notes taken from the meeting,
22 which is more reliable and accurate in your
23 mind?
24 MS. MILLER: Object to form.

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1 A. I cannot say that these are my
2 reliable notes from a meeting that I don't
3 remember took place and I don't remember
4 writing.
5 BY MR. ELSNER:
6 Q. Number 6, another opportunity to
7 create a better system is to have an automatic
8 hard stop of orders for controlled substances,
9 correct?
10 MS. MILLER: Objection to form.
11 A. I see that Number 6, "No automatic
12 hard stops of orders." I see where that's
13 written.
14 BY MR. ELSNER:
15 Q. It would be better if the system was
16 automatic and didn't require someone to send an
17 e-mail and then hope that someone received the
18 e-mail and stopped the order, correct?
19 MS. MILLER: Object to form.
20 A. Not necessarily.
21 BY MR. ELSNER:
22 Q. Does the new system have a hard stop
23 or not?
24 MS. MILLER: Object to form.

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1 A. The new system, when an order is
 2 flagged, it holds the order.
 3 BY MR. ELSNER:
 4 Q. Why? Is it a better system than
 5 relying on e-mails and phone calls?
 6 MS. MILLER: Object to form.
 7 A. Not necessarily.
 8 BY MR. ELSNER:
 9 Q. Why did you change it?
 10 MS. MILLER: Object to form.
 11 A. The decision was made to change it.
 12 BY MR. ELSNER:
 13 Q. Did you agree to change it?
 14 A. I don't recall having an objection.
 15 Q. Did you support it?
 16 MS. MILLER: Object to form.
 17 A. I don't know if this is the only
 18 solution that I would have supported. There's
 19 multiple ways of stopping orders, there could
 20 have been others, but this is the decision we
 21 went with, and I believe I supported the
 22 decision we went with.
 23 BY MR. ELSNER:
 24 Q. Okay. And so that was another

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1 opportunity to enhance or fix or remedy or
 2 create a better system at CVS was to have an
 3 automatic hard stop of the order. That's what
 4 you wrote, correct?
 5 MS. MILLER: Object to form.
 6 A. Like I said, I don't recall writing
 7 this, and at no time do I recall there ever
 8 needing to be a fix of the current SOM system.
 9 BY MR. ELSNER:
 10 Q. But it was changed, right --
 11 MS. MILLER: Object to form.
 12 BY MR. ELSNER:
 13 Q. -- to a hard stop of the order?
 14 MS. MILLER: Object to form.
 15 A. Today our process, I believe, has a
 16 hard stop.
 17 BY MR. ELSNER:
 18 Q. Under the old system, in order for the
 19 stop to occur someone would either have to send
 20 an e-mail or place a phone call in order to do
 21 that, correct?
 22 MS. MILLER: Object to form.
 23 A. I don't fully recall what that process
 24 was.

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1 BY MR. ELSNER:
 2 Q. Well, that's what you wrote under 6A,
 3 right, "Happens via e-mail/phone call - DC and
 4 LP Manager"? Is that what you wrote?
 5 MS. MILLER: Object to form.
 6 A. Again, I don't recall writing this
 7 document. I see that it says that there. I
 8 don't fully recall what the process was.
 9 BY MR. ELSNER:
 10 Q. In November of 2012 when a suspicious
 11 order was flagged or stopped by the system, not
 12 all controlled substances to that pharmacy were
 13 stopped, correct?
 14 MS. MILLER: Object to form.
 15 A. So the system flagged orders of
 16 interest.
 17 BY MR. ELSNER:
 18 Q. Yes.
 19 A. So that's what it was designed to do.
 20 Q. Okay. And when those orders of
 21 interest were reviewed and it was determined
 22 that there was a potentially suspicious order,
 23 additional orders of that same controlled
 24 substance would be stopped from being shipped to

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1 the pharmacy, correct?
 2 MS. MILLER: Object to form.
 3 A. I recall the system when an order
 4 flagged, whatever flagged was reviewed.
 5 BY MR. ELSNER:
 6 Q. Right. And then if there was a
 7 decision made that it was a suspicious order,
 8 then there would be a stop placed on further
 9 shipments of that same drug to that pharmacy,
 10 correct?
 11 MS. MILLER: Object to form.
 12 A. I don't recall what that process was.
 13 BY MR. ELSNER:
 14 Q. You wrote "Only the order in question
 15 is stopped, not all controlled substances" are
 16 stopped, correct?
 17 MS. MILLER: Object to form.
 18 A. I don't remember writing this
 19 document, but that is what it says.
 20 BY MR. ELSNER:
 21 Q. You did a whole risk analysis for CVS
 22 on what the procedure should be, right? Whether
 23 we stop only that drug, whether we stop all
 24 controlled substances, whether we stop only the

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1 drugs in that family of drugs, you did a whole
2 risk analysis of that, correct?
3 MS. MILLER: Object to form.
4 A. I know there were discussions around
5 how to approach it. I don't know if I ever did
6 a deep dive risk assessment.
7 MR. ELSNER: All right. This is Exhibit 11.
8 (Whereupon, CVS-Schiavo-11 was marked
9 for identification.)
10 BY MR. ELSNER:
11 Q. This is an e-mail from you to your
12 boss, Tom Bourque, dated December 13, 2012,
13 correct?
14 A. That's what it looks like.
15 Q. It says "Attached is what I put
16 together for our options on what to do if an
17 order flags." Correct? Is that what you wrote?
18 A. That's what it says.
19 Q. Okay. And the attachment that you
20 sent to your boss, Tom Bourque, says "Suspicious
21 Order Monitoring. Holding of Flagged Order
22 Options," right?
23 A. That's the title of this document.
24 Q. Okay. And on the very bottom of the

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1 page, the first page there, 78046, there's a
2 Risks, there's a "Risks" column in the middle.
3 Do you see that?
4 A. I see the Risks column.
5 Q. Okay.
6 MS. MILLER: Do you want to take a
7 minute to review this?
8 A. Yeah, can I read through?
9 BY MR. ELSNER:
10 Q. Sure.
11 (Witness reviewing document.)
12 A. Okay.
13 Q. Are you with me?
14 So if we go to the very bottom of the
15 page, there are three options discussed, right?
16 The last option, the very bottom one says "Hold
17 only the Controlled Substances that was flagged
18 by the SOM System on the order from being sent
19 to the store, along with Future Orders."
20 Meaning they were just going to hold the exact
21 controlled substance that was flagged, correct?
22 MS. MILLER: Object to form.
23 BY MR. ELSNER:
24 Q. Is that what it says?

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1 MS. MILLER: Object to form.
2 A. So I see that on this document.
3 Again, this is a document, until seeing it now,
4 I don't recall writing this document or
5 reviewing this document.
6 BY MR. ELSNER:
7 Q. Okay. And you assessed the risk of
8 that policy and procedure to be high, correct?
9 MS. MILLER: Object to form.
10 A. I see the risk level there indicated
11 high, but I don't know if that was me making
12 that determination or if this was --
13 BY MR. ELSNER:
14 Q. That's what's written on the chart
15 that you sent to your boss Tom Bourque, correct?
16 MS. MILLER: Object to form.
17 A. It appears from the cover e-mail I did
18 send this, and it says "Risk Level, High."
19 BY MR. ELSNER:
20 Q. Okay. And the risk that you describe
21 is that by holding only the controlled substance
22 that is flagged in an order, the store could
23 easily switch to a similar drug of abuse,
24 correct?

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1 MS. MILLER: Object to form.
2 BY MR. ELSNER:
3 Q. Is that what you wrote?
4 A. I see the document says that. I don't
5 know if I wrote that.
6 Q. But it's on the document that you sent
7 to Tom Bourque, your boss, correct?
8 MS. MILLER: Object to form.
9 A. It's on this document that seems to be
10 that attachment in that e-mail.
11 BY MR. ELSNER:
12 Q. And then under "Comments" you say
13 "This option carries the most risk and would
14 possibly create more 'Suspicious Orders' for
15 that store (from CVS and Outside Vendor), that
16 will be required to be reported to the DEA.
17 This will increase the likelihood of an
18 inspection." Correct?
19 MS. MILLER: Object to form.
20 A. I see where this document says that.
21 BY MR. ELSNER:
22 Q. Okay. It also increases the risk of
23 diversion, right?
24 MS. MILLER: Object to form.

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<p>1 A. It doesn't say that. I don't know.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Does it increase the risk of</p> <p>4 diversion? It does, doesn't it?</p> <p>5 MS. MILLER: Object to form.</p> <p>6 A. No.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. It increases the risk because the</p> <p>9 pharmacy, as you wrote, could switch from one</p> <p>10 drug to another drug of abuse, right?</p> <p>11 MS. MILLER: Object to form.</p> <p>12 A. Again, I don't remember writing this</p> <p>13 document, nor this process that you're referring</p> <p>14 to. I don't know this to be a process we ever</p> <p>15 had, and I don't believe this is a process we</p> <p>16 ever implemented. And I don't know if it would</p> <p>17 increase diversion.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. You wrote under Risks in the middle</p> <p>20 column "the store will easily be able to switch</p> <p>21 to a similar drug of abuse." Correct?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I see where the document says that. I</p> <p>24 don't remember writing that.</p>	<p>1 flagged drug is being held." Is that what you</p> <p>2 wrote?</p> <p>3 A. I don't know if I wrote that.</p> <p>4 Q. That's what the document says that you</p> <p>5 sent to your boss, right?</p> <p>6 A. That is what this document says.</p> <p>7 Q. And then you say "If another</p> <p>8 controlled substance hits our SOM system, or an</p> <p>9 Outside Vendor's SOM system on the next order,</p> <p>10 we or they will be required to report that as</p> <p>11 well. This could trigger questions from the DEA</p> <p>12 on why we are shipping to a store or letting a</p> <p>13 store order that we already identified as</p> <p>14 Suspicious." Is that what you wrote?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. I don't remember writing that.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Is that what's in the document that</p> <p>19 you sent to your boss?</p> <p>20 A. That is what's in this document.</p> <p>21 Q. Do you understand that to be a risk of</p> <p>22 this medium option of holding all the drugs in</p> <p>23 the same family group?</p> <p>24 MS. MILLER: Object to form.</p>
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<p>1 BY MR. ELSNER:</p> <p>2 Q. Under the second option, it says "Hold</p> <p>3 All High Risk Controlled Substances, Known</p> <p>4 Combination, and/or Drugs in the Same Family on</p> <p>5 the same flagged order from being sent to the</p> <p>6 store, along with future orders."</p> <p>7 Did I read that correctly?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. It looks like that's what the document</p> <p>10 says.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. And you assessed this as a medium</p> <p>13 risk, correct?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. I can't recall if that is my risk</p> <p>16 assessment on that.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. But that's what the document says,</p> <p>19 right?</p> <p>20 A. I can see on this document under risk</p> <p>21 level, that one indicates medium.</p> <p>22 Q. And under the third bullet under Risks</p> <p>23 it says "Possible that diversion of another</p> <p>24 controlled substance will take place while the</p>	<p>1 A. I can't say whether that is</p> <p>2 specifically a risk of this option, but this is</p> <p>3 another option that I don't know if we ever --</p> <p>4 this was ever our process, nor is it our process</p> <p>5 today.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. In the last comment in that middle</p> <p>8 column, it reads "As part of the DEA</p> <p>9 Regulations, they expect the registrant to 'know</p> <p>10 your customer,' by reporting an order as</p> <p>11 suspicious, while continuing to ship controlled</p> <p>12 substances, the DEA could argue that drugs were</p> <p>13 being shipped without us fully knowing" -- I</p> <p>14 think you mean our, whoever drafted this -- "our</p> <p>15 customers." Is that correct? Did I read that</p> <p>16 correctly?</p> <p>17 MS. MILLER: Object to form.</p> <p>18 A. It says "knowing out customer," as it</p> <p>19 reads.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. I'm sure it's a typo. That means our,</p> <p>22 right?</p> <p>23 A. Could mean our.</p> <p>24 Q. And that was another comment or risk</p>

<p style="text-align: right;">Page 186</p> <p>1 that the DEA might conclude that CVS doesn't 2 know who its customer is if we adopt this middle 3 ground, correct? 4 MS. MILLER: Object to form. 5 A. That is what this document says under 6 this option. But again, I don't recall if we 7 ever -- this was ever our policy, nor is it our 8 policy today. 9 BY MR. ELSNER: 10 Q. The lowest risk option would be that 11 if you identify a suspicious order for a 12 controlled substance would be to stop shipments 13 of all controlled substances into that pharmacy 14 until you resolve the issue, correct? 15 MS. MILLER: Object to form. 16 A. The option "Hold all Controlled 17 Substances on the Flagged Order from being sent 18 to the store, along with future orders" is what 19 it says. 20 BY MR. ELSNER: 21 Q. And that would be the lowest risk 22 option, correct? 23 MS. MILLER: Object to form. 24 A. This document says under Risk Level</p>	<p style="text-align: right;">Page 188</p> <p>1 MS. MILLER: Object to form. 2 BY MR. ELSNER: 3 Q. To hold all the high-risk controlled 4 substances, known combination, and/or drugs in 5 the same family as the flagged order, correct? 6 MS. MILLER: Object to form. 7 A. No, I don't believe that's the exact 8 solution that we went with. 9 BY MR. ELSNER: 10 Q. You told me that today CVS blocks all 11 of the orders of controlled substances in the 12 same family group as the suspicious order along 13 with future orders in that family group, 14 correct? 15 MS. MILLER: Object to form. 16 A. I'm just reading what's on the 17 document. It says "Hold All High Risk 18 Controlled Substances," which I don't know what 19 drugs that's referring to, "Known combinations, 20 and/or Drugs in Same Family." This seems to be 21 different than I recall our process being. 22 BY MR. ELSNER: 23 Q. If we turn back to item 7 in the 24 opportunities document. Are you with me, Number</p>
<p style="text-align: right;">Page 187</p> <p>1 "Low." 2 BY MR. ELSNER: 3 Q. Right. Lowest risk of diversion, 4 right? Because you're stopping all future, all 5 controlled substances, not just the family group 6 and not just the individual drug, right? 7 MS. MILLER: Object to form. 8 A. I can't say specific to what that risk 9 level is referring to. 10 BY MR. ELSNER: 11 Q. What does CVS do today with respect to 12 suspicious orders for controlled substances? Do 13 you block all future orders to the pharmacy from 14 the family group, all controlled substances, or 15 only that drug? 16 MS. MILLER: Object to form. 17 A. If an order is deemed suspicious we 18 report it to the DEA, and I believe we hold the 19 family group of the drug that was identified to 20 be suspicious. 21 BY MR. ELSNER: 22 Q. So CVS's approach is the medium 23 approach in terms of the risk levels identified 24 in this document, correct?</p>	<p style="text-align: right;">Page 189</p> <p>1 7? 2 A. Number 7. 3 Q. You wrote only the order in question 4 is stopped, not all controlled substances, 5 correct? 6 A. Again, we're back on the document I 7 don't remember writing, but it says "Only order 8 in question is stopped, not all controlled 9 substances." 10 Q. Okay. So not all controlled 11 substances to the pharmacy were stopped, and not 12 all drugs of the same family group were stopped, 13 right, only order in question is stopped, is 14 that what you wrote? 15 MS. MILLER: Object to form. 16 A. I can't say that I wrote that, and I 17 don't recall if that was the process, was or was 18 not the process. 19 BY MR. ELSNER: 20 Q. But that's what's written here, 21 correct? 22 A. The document here reads "Only order in 23 question is stopped, not all controlled 24 substances."</p>

<p style="text-align: right;">Page 190</p> <p>1 MR. ELSNER: Okay. I'm going to mark 2 this next document as the next exhibit. This is 3 MR 12. It's also Schiavo 12. That doesn't 4 happen very often. 5 (Whereupon, CVS-Schiavo-12 was marked 6 for identification.) 7 BY MR. ELSNER: 8 Q. This is another e-mail from you to 9 your boss, Tom Bourque, dated January 23, 2013. 10 The subject is "Stop Order_Order Resumption." 11 And then it states "Updated SOM SOP. Thank you, 12 Craig." 13 Is that what you wrote to your boss, 14 Tom Bourque? 15 A. Looking at this e-mail, it looks like 16 I wrote that. 17 Q. And it looks like you received in the 18 e-mail prior to that an e-mail from Aaron 19 Burtner who made some recommendation -- 20 recommended changes, and you've attached the 21 updated SOP for stopped order resumption, 22 correct? Is that what Aaron Burtner wrote to 23 you, among others? 24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 192</p> <p>1 A. That's what it says under "Revision 2 Documentation." 3 Q. Okay. So CVS never had a policy 4 before January 1, 2013, a written policy, with 5 respect to when an order should be stopped and 6 how that order should be resumed as part of its 7 standard operating procedures, correct? 8 MS. MILLER: Object to form. 9 A. I don't recall that to be the case. 10 BY MR. ELSNER: 11 Q. Well, that's what the document says, 12 right, that this is the first -- that the first 13 version of this standard operating procedure 14 with respect to stop orders was January 7, 2013, 15 right? 16 MS. MILLER: Object to form. 17 A. That's what it says under "Revision 18 Documentation." That's not to say this wasn't 19 covered in another policy. 20 BY MR. ELSNER: 21 Q. Was it? 22 MS. MILLER: Object to the form. 23 A. I don't recall. 24 BY MR. ELSNER:</p>
<p style="text-align: right;">Page 191</p> <p>1 A. I see Aaron's e-mail. I'm in the 2 "To," and then I see an e-mail to my boss with 3 an attachment. 4 BY MR. ELSNER: 5 Q. Okay. And if you look at the 6 attachment, this is actually the SOM process, 7 the Stop Order/Order Resumption process, 8 Revision Number 3 dated January 21, 2013, 9 correct? 10 MS. MILLER: Object to form. 11 A. That's the date on this document. 12 BY MR. ELSNER: 13 Q. Okay. And you know from manuals at 14 CVS that if you look on the last page you can 15 look at the history of the revision of the 16 document, correct? 17 MS. MILLER: Object to form. 18 A. I believe most of our policies at CVS 19 have a section like this at the end. 20 BY MR. ELSNER: 21 Q. Okay. And so it says that this 22 document was created for the first time on 23 January 7, 2013, right? That was the first 24 version of this?</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Isn't it true that the practice at the 2 time in 2012 if there was a suspicious order 3 that was presented, that CVS would only stop 4 that same drug from being shipped to the 5 pharmacy? 6 MS. MILLER: Object to form. 7 A. I don't recall what that process was. 8 BY MR. ELSNER: 9 Q. If you turn to Page 2 of 3 of the 10 document, sort of the first full paragraph 11 beginning with the sentence "Once." Do you see 12 the paragraph I'm speaking about? 13 A. "Once an order of interest"? 14 Q. Yes. It reads "Once an order of 15 interest is identified, the SOM Analyst will 16 complete all the necessary due diligence and the 17 SOM Manager will be notified to review the 18 order." And then it describes the due diligence 19 and what it will include, "contacting the 20 pharmacist, reviewing dispensing data, reviewing 21 ordering data, etcetera." Then it reads "If the 22 SOM Manager agrees that the order is an order of 23 interest, the Distribution Center will be 24 contacted, both by e-mail and telephone, by the</p>

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1 SOM Manager to place a Hold on the drug family
2 in question on the order of interest." Is that
3 what it says?
4 A. It appears that's what it says.
5 Q. Okay. So CVS said part of this new
6 policy is going to hold the drug family in
7 question for the order of interest, the middle
8 ground risk level that we just discussed in your
9 risk analysis, correct?
10 MS. MILLER: Object to form.
11 A. So like I said, I see that this is the
12 creation of this document. I can't say whether
13 or not that is a new process or we implemented
14 it into this process and that was the process.
15 BY MR. ELSNER:
16 Q. Okay. But at least at this point in
17 time, January 21, 2013, the process would be
18 there's an order of interest, you hold all the
19 drug family in question on that order of
20 interest and don't ship that family of drugs,
21 the middle risk policy that you described in
22 your prior document, correct?
23 MS. MILLER: Object to form.
24 If you want to look at the other

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1 document he's referring to --
2 A. Which was the other document, this?
3 BY MR. ELSNER:
4 Q. I'm talking about the risk analysis
5 that you did. We're talking about the middle
6 ground, right, hold the family in question?
7 A. These don't seem to be exactly the
8 same.
9 Q. What's the difference?
10 A. On this previous document that we
11 reviewed that I think you said I drafted, I
12 don't remember drafting it. This is talking
13 about known combinations, high-risk controlled
14 substances, which I don't know what that's
15 referring to. Doesn't seem to be exactly the
16 same.
17 Q. Okay. Would you agree that it's a
18 middle risk to hold all the drugs in the same
19 family group, whereas it would be a lower risk
20 to stop all controlled substances being shipped
21 to that pharmacy after an order of interest or
22 suspicion?
23 MS. MILLER: Object to form.
24 A. Not sure I'm the one who determines

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1 the risk on something like that.
2 BY MR. ELSNER:
3 Q. Well, you're the director of business
4 compliance at CVS, right?
5 MS. MILLER: Object to form.
6 A. My current title is director, business
7 compliance officer.
8 BY MR. ELSNER:
9 Q. Okay. Would you agree that it would
10 be less risky if you just stopped all controlled
11 substances as opposed to only the controlled
12 substances in the family group identified?
13 MS. MILLER: Object to form.
14 A. I can't say that that would be more or
15 less risky.
16 BY MR. ELSNER:
17 Q. If you go to the bottom, if we're back
18 to the manual, in the -- there's sort of two big
19 bullets at the end of the document, beginning
20 with a sentence that starts "If the order of
21 interest is determined to be suspicious, the
22 following steps, but not limited to, may be
23 taken."
24 Do you see where I'm at?

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1 MS. MILLER: Mike --
2 MR. ELSNER: We're on Page 25368.
3 MS. MILLER: Got it. Thank you.
4 Where on the page?
5 MR. ELSNER: It's blown up for you
6 right next to you.
7 BY MR. ELSNER:
8 Q. "If the order of interest is
9 determined to be suspicious, the following
10 steps, but not limited to, may be taken." Do
11 you see where I'm at?
12 A. I see where you are in the document.
13 Q. And it says "The SOM Manager will
14 contact the Distribution Center and instruct
15 to," and it says "Cancel the items previously
16 held (family group); Complete a Mark Out on all
17 items to be cancelled; Provide the SOM Manager
18 with a copy of the Quality Scan for the tote
19 containing the suspicious order (family group);
20 and Discontinue shipping the drug family in
21 question to the store in question until further
22 instruction is received."
23 Is that what the policy was as of
24 January 21, 2013?

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1 A. I don't recall that exact process.
2 Q. Is that what the document says?
3 A. How you read it is accurately how it
4 appears in the document.
5 Q. If we go back to your opportunities
6 chart -- actually just one last question on
7 this.
8 Who made the decision to draft this
9 stop order policy?
10 MS. MILLER: Object, basis of
11 attorney/client privilege.
12 To the extent you can answer without
13 revealing attorney/client communications, you
14 may answer.
15 A. I don't recall.
16 BY MR. ELSNER:
17 Q. Okay. If you go back to MR 12 that we
18 were looking at, which is the e-mail. That's
19 the right document.
20 MS. MILLER: The cover e-mail on the
21 same document?
22 BY MR. ELSNER:
23 Q. The cover e-mail. The stop order
24 policy. Do you see where we're at?

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1 A. I see the document.
2 Q. If you go to the second page, it's
3 25366.
4 A. Okay.
5 Q. This is an e-mail from you to Aaron
6 Burtner. It says "Aaron, I made a couple of
7 suggestions and had a couple questions, anything
8 I added is in green. If you don't agree with
9 any of the suggestions, please feel free to
10 leave them out.
11 "Nice job putting this together, it
12 looks really good and covers the entire process
13 very clearly."
14 Is that what you wrote?
15 A. That e-mail is from me, and it is to
16 Aaron.
17 Q. So Aaron drafted the first policy and
18 procedure manual, is that right?
19 MS. MILLER: Object to form.
20 A. I don't recall if he was the one to
21 draft this policy.
22 BY MR. ELSNER:
23 Q. But you congratulated him for putting
24 this together, is that what you wrote?

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1 MS. MILLER: Object to form.
2 A. I see that the e-mail says "Nice job
3 putting this together."
4 BY MR. ELSNER:
5 Q. And that indicates that he put it
6 together?
7 MS. MILLER: Object to form.
8 A. It indicates I said nice job putting
9 it together.
10 BY MR. ELSNER:
11 Q. But it doesn't indicate he did?
12 MS. MILLER: Object to form.
13 A. I don't know if Aaron is the one who
14 created this document.
15 BY MR. ELSNER:
16 Q. Okay. If you look at the next
17 document -- e-mail above it, you send an e-mail
18 to Christopher Tulley and Dean Vanelli. "Stop
19 Order_Order Resumption" process. "Chris and
20 Dean, I made a couple suggestions to Aaron's
21 changes. I got his out of office as I forgot he
22 was leaving early today. Thank you."
23 So this is you forwarding the policy
24 and procedure to Chris Tulley and Dean Vanelli,

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1 is that right?
2 A. That's what it appears to be.
3 Q. Okay. Then Dean Vanelli in the next
4 e-mail, he makes some changes in blue font, and
5 he forwards those changes to the same document
6 to you and Aaron Burtner, among others, is that
7 right?
8 MS. MILLER: Object to form.
9 A. I see an e-mail from Dean to -- and I
10 am on the list of people who received it.
11 BY MR. ELSNER:
12 Q. So Dean made some edits, right?
13 MS. MILLER: Object to form.
14 A. I don't recall this e-mail trail, but
15 Dean's e-mail here indicates that he made
16 changes in blue.
17 BY MR. ELSNER:
18 Q. Okay. And then after that Aaron made
19 some -- made the recommended changes, and he's
20 attached the updated SOP, correct?
21 MS. MILLER: Object to form.
22 BY MR. ELSNER:
23 Q. Is that what he wrote?
24 A. Aaron has an e-mail stating "I made

<p style="text-align: right;">Page 202</p> <p>1 recommended changes and have attached updated 2 SOP." And I am on that "To" list. 3 Q. And you sent that to Tom Bourque, 4 right? 5 A. It looks like I forwarded this to Tom 6 Bourque. 7 Q. Okay. So you participated in the 8 drafting of the SOM SOP as it relates to stop 9 orders, right? 10 MS. MILLER: Object to form. 11 A. I don't recall reviewing or providing 12 feedback. Going off of this document, it looks 13 like I made some suggestions. 14 BY MR. ELSNER: 15 Q. If we go back to the opportunities 16 document, it's true at this time that when the 17 algorithm for the suspicious order monitoring 18 program flagged certain orders, that about 2 to 19 3 percent of the orders that were flagged would 20 be reviewed for an enhanced review by Aaron 21 Burtner, correct? 22 MS. MILLER: Object to form. 23 A. I don't remember that to be the case. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 204</p> <p>1 A. I see where this document says 2 "100-plus orders flagged by system, looked." I 3 don't know what that means. I don't know where 4 I'm getting 100-plus orders from or the time 5 frame or -- I see where it says it in the 6 document. I'm not sure exactly what it means. 7 BY MR. ELSNER: 8 Q. Were you aware that Aaron Burtner was 9 looking at about 2 to 3 percent of 100 orders 10 flagged by the suspicious order monitoring 11 system to do a deeper dive? 12 MS. MILLER: Object to form. 13 A. The document says "100-plus orders 14 flagged by system, looked (past history, 15 Algorithm, MAX/MIN)." Then "2-3 were stopped." 16 I don't exactly know what order that's referring 17 to or, again, I don't recall drafting this 18 document or seeing this document. 19 BY MR. ELSNER: 20 Q. When the suspicious order monitoring 21 system flagged an order as potentially 22 suspicious, Aaron Burtner was reviewing those 23 orders at this time, correct? 24 MS. MILLER: Object to form.</p>
<p style="text-align: right;">Page 203</p> <p>1 Q. Okay. If you look under number 8, it 2 says "100-plus Orders flagged by the system, 3 looked (past history, Algorithm, MAX/MIN)." 4 Do you see that line? Did I read it 5 right? 6 A. I see where it says that. 7 Q. Okay. And it says "2 to 3 were 8 stopped by Aaron for review." 9 Did I read that correctly? 10 A. I see where it says that. 11 Q. And then there are three things 12 listed, "Deeper dive review; Dispensing versus 13 Ordering; Reach out to store." 14 Do you see that? 15 A. I see where it says that. 16 Q. So do you understand that of the 100 17 orders flagged by the system, about 2 to 3 of 18 those 100 orders would be stopped by Aaron for 19 review and then he would do a deeper dive on 20 those 2 to 3 orders considering the dispensing 21 and ordering history, and he'd reach out to some 22 of the stores. 23 Do you see that? 24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 205</p> <p>1 A. At this time I don't know exactly who 2 was reviewing orders. I do know at one time 3 Aaron's responsibilities were reviewing orders. 4 BY MR. ELSNER: 5 Q. And it says in this document, "2 to 3 6 were stopped by Aaron." That's Aaron Burtner, 7 right? 8 MS. MILLER: Object to form. 9 A. Based on the cover page of this e-mail 10 and Aaron being on the e-mail, that is probably 11 Aaron. 12 BY MR. ELSNER: 13 Q. Okay. You understand that when the 14 SOM system flags suspicious orders that Aaron 15 Burtner didn't call every single pharmacy about 16 every single order that was identified or 17 flagged under the suspicious order monitoring 18 system, right? 19 MS. MILLER: Object to form. 20 A. So I don't know the full process and 21 detail that the SOM team followed. I wasn't 22 involved in the day-to-day. But the system 23 itself wasn't necessarily the algorithms, 24 weren't necessarily designed to flag suspicious</p>

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1 orders. My understanding was they were to
2 identify orders of interest.
3 BY MR. ELSNER:
4 Q. What's the difference?
5 MS. MILLER: Object to form.
6 BY MR. ELSNER:
7 Q. Orders of interest for what?
8 MS. MILLER: Object to form.
9 A. My understanding is the system was
10 designed to look at orders that potentially were
11 just different than other orders and the team
12 looked at it.
13 BY MR. ELSNER:
14 Q. I mean, orders that were unusual in
15 size, right?
16 MS. MILLER: Object to form.
17 A. I don't really know exactly what
18 the -- how the system was designed.
19 BY MR. ELSNER:
20 Q. This is important. So did the system
21 look at orders for unusual size, frequency, and
22 pattern?
23 MS. MILLER: Object to form.
24 A. My understanding is the system was

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1 designed to meet the -- our requirements as a
2 wholesale distributor.
3 BY MR. ELSNER:
4 Q. And those requirements are to identify
5 orders of suspicious size, frequency, and
6 deviation, right?
7 MS. MILLER: Object to form.
8 A. As I understand the regulation, it's
9 size, frequency, pattern, but the requirement is
10 that we have a system that identified orders,
11 and I was comfortable we had a system that did
12 that.
13 BY MR. ELSNER:
14 Q. So these are the orders of interest
15 that are being identified. These are the orders
16 of unusual size, frequency, or pattern, correct?
17 That's what the SOM system was designed to
18 detect?
19 MS. MILLER: Object to form.
20 BY MR. ELSNER:
21 Q. Or was it not? Was it not designed
22 that way?
23 A. I wasn't part of the design of the
24 system at this point. My understanding was we

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1 had a system, and I didn't have any concerns
2 with the system at that time.
3 Q. Well, part of what you were hired to
4 do was to create and implement for the
5 distribution centers a suspicious order
6 monitoring system, that's what you wrote in your
7 review, right?
8 A. Again, I don't --
9 MS. MILLER: Object to form.
10 A. I don't remember writing that review.
11 And if that's what it says, and I don't have it
12 in front of me, but I don't recall ever being
13 hired to do that.
14 BY MR. ELSNER:
15 Q. But in order to create a system, you
16 needed to understand the system that was in
17 place. So did you understand the system in
18 place to be identifying orders of interest based
19 on unusual size, frequency, or pattern?
20 MS. MILLER: Object to form.
21 BY MR. ELSNER:
22 Q. Yes or no, or I don't know.
23 A. I knew the SOM process at a high
24 level, and the way I understood it was that we

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1 built a system to comply with DEA regulation.
2 Q. And that DEA regulation at the time
3 was to identify orders of suspicious size and
4 the like, right?
5 MS. MILLER: Object to form.
6 A. The way I understand the requirement
7 is we needed to have a system.
8 BY MR. ELSNER:
9 Q. You needed to just have a system?
10 A. We needed to have a system that a -- a
11 suspicious order monitoring system.
12 Q. That would do what?
13 A. Report suspicious orders.
14 Q. And a suspicious order by the DEA was
15 considered to be what?
16 MS. MILLER: Object to form.
17 A. I don't recall ever seeing guidance
18 from the DEA as to what was suspicious.
19 BY MR. ELSNER:
20 Q. Did the system in place in 2012 at
21 CVS -- was there a system in place to identify
22 orders that deviated substantially from a normal
23 pattern or size? Did you understand that system
24 to be able to do that?

<p style="text-align: right;">Page 210</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. In 2012, I didn't -- I don't believe I</p> <p>3 recall the specifics or ever knew the specifics</p> <p>4 of the suspicious order monitoring system.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. So you don't know whether it was in</p> <p>7 compliance with DEA regulations or not, correct?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. I don't recall ever hearing or having</p> <p>10 a concern that we were not fulfilling our</p> <p>11 requirements.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. And you didn't do any steps to</p> <p>14 determine whether the system met the</p> <p>15 requirements or not, correct?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. In 2012 when I first started with the</p> <p>18 company, I don't recall exactly what steps I</p> <p>19 took.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Well, do you know one way or the other</p> <p>22 whether the system that existed before the new</p> <p>23 system came into place tracked orders for --</p> <p>24 orders of unusual size, deviating from a normal</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. Do you know why one order would be</p> <p>2 subject to a deeper dive than another?</p> <p>3 MS. MILLER: Object to form.</p> <p>4 A. I wasn't part of that process.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Who would we ask to determine whether</p> <p>7 the SOM system complied with the DEA regulations</p> <p>8 in 2012? Who at CVS?</p> <p>9 MS. MILLER: Object to form.</p> <p>10 A. I would think our lawyers are the ones</p> <p>11 who make that determination.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. In order to determine what the system</p> <p>14 was at CVS in November of 2012, if I asked you</p> <p>15 to do that today, figure out for me what the</p> <p>16 system was doing in 2012, who would you go talk</p> <p>17 to?</p> <p>18 MS. MILLER: Object to form.</p> <p>19 Can we take a break soon for lunch.</p> <p>20 MR. ELSNER: Not in the middle of a</p> <p>21 question.</p> <p>22 MS. MILLER: No, not right now, after</p> <p>23 this.</p> <p>24 MR. ELSNER: I've got a few more in</p>
<p style="text-align: right;">Page 211</p> <p>1 pattern or orders of unusual frequency? Did the</p> <p>2 system track that?</p> <p>3 A. I can't speak to the system that I</p> <p>4 wasn't part of it being developed. I just</p> <p>5 recall not having any concerns that we were not</p> <p>6 meeting our requirements.</p> <p>7 Q. But you didn't know one way or the</p> <p>8 other, right? You didn't know whether the</p> <p>9 system tracked for that information, correct?</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. I don't recall the specifics of the</p> <p>12 algorithms or the system.</p> <p>13 MS. MILLER: Object to form.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. The orders of interest that were</p> <p>16 identified by the SOM system in place in</p> <p>17 November of 2012, not every order of interest</p> <p>18 resulted in a deeper dive review, including</p> <p>19 reaching out to the particular pharmacy in</p> <p>20 question, correct?</p> <p>21 MS. MILLER: Object to form.</p> <p>22 A. I can't say. I was not part of the</p> <p>23 day-to-day process.</p> <p>24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 213</p> <p>1 this area and then we can move on.</p> <p>2 A. I don't recall who ran or owned the</p> <p>3 SOM process at this time.</p> <p>4 MS. MILLER: Craig, are you ready for</p> <p>5 a break?</p> <p>6 THE WITNESS: I could use a break</p> <p>7 soon.</p> <p>8 MS. MILLER: Can we take a break?</p> <p>9 We've been going now -- we talked about 12:15.</p> <p>10 We've been going at least an hour and</p> <p>11 15 minutes.</p> <p>12 MR. ELSNER: Okay.</p> <p>13 THE VIDEOGRAPHER: We're going off the</p> <p>14 record at 12:17 p.m.</p> <p>15 (Whereupon, a luncheon recess was</p> <p>16 taken.)</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1 AFTERNOON SESSION
2
3 THE VIDEOGRAPHER: We're back on the
4 record at 12:57 p.m.
5 BY MR. ELSNER:
6 Q. Mr. Schiavo, if we look at item number
7 9 in the opportunities list from your notes from
8 the meeting in 2012, it says "Hold or cancel
9 orders when flagged?" And then under A it says
10 "Holding order until due diligence is completed
11 may be the best option." Did I read that
12 correctly?
13 A. I see that is written on this
14 document. And just as I said earlier, I don't
15 remember writing this document.
16 Q. Okay. Would you agree as a matter of
17 policy that it would be best to hold an order
18 until due diligence is completed before sending
19 out that order?
20 MS. MILLER: Object to form.
21 A. Where it's written here, I don't know
22 what hold is referring to, what part of the
23 process.
24 BY MR. ELSNER:

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1 Q. Well, would you agree generally that
2 holding an order until you complete the due
3 diligence would be a sound due diligence
4 process?
5 MS. MILLER: Object.
6 BY MR. ELSNER:
7 Q. Irrespective of the document.
8 MS. MILLER: Object to form.
9 A. I'm not sure exactly what's meant by
10 hold.
11 BY MR. ELSNER:
12 Q. Under item 10 it reads "Process in DCs
13 needs to be developed." Is that the
14 distribution centers?
15 A. I believe DC stands for distribution
16 centers.
17 Q. And that's what it says, that the
18 process in the DCs needs to be developed, the
19 distribution centers, is that correct? Is that
20 what's written here?
21 MS. MILLER: Object to form.
22 A. I see that is written there. I don't
23 know what process that's referring to.
24 BY MR. ELSNER:

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1 Q. If we go to the second page, item
2 number 15, it reads "OV." I believe that stands
3 for other vendors, is that right?
4 A. I believe that stands for outside
5 vendors.
6 Q. Outside vendors, okay. Outside
7 vendors and DC, that's the distribution center,
8 is that right?
9 A. I believe so.
10 Q. Okay. So "outside vendors and
11 distribution center orders don't get
12 reviewed/monitored together. Both pieces of
13 information need to run through the same
14 system." Did I read that correctly?
15 A. That is what this document says.
16 Q. Is it your opinion that given the
17 volume of controlled substances that CVS is
18 dispensing that an automated system is an
19 important component of a suspicious order
20 monitoring program or system?
21 MS. MILLER: Object to form.
22 A. I don't believe that an SOM system
23 needs to have an automatic element to it. I
24 don't know exactly -- I'm not exactly sure what

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1 automatic element is.
2 BY MR. ELSNER:
3 Q. I might not have been clear.
4 Would you agree that given just the
5 volume of controlled substances that we're
6 dealing with at CVS, that having an electronic
7 system in place to monitor those orders would be
8 important?
9 MS. MILLER: Object to form.
10 A. I can't say it would be important.
11 BY MR. ELSNER:
12 Q. Well, would it be effective to use a
13 manual system?
14 MS. MILLER: Object to form.
15 A. It very well could be.
16 BY MR. ELSNER:
17 Q. Do you think it would be better to use
18 a manual system at CVS to review all the
19 controlled substances as opposed to an
20 electronic one?
21 MS. MILLER: Object to form.
22 A. That's a hard question to answer.
23 There's a lot of elements that go into a SOM
24 process. It depends.

<p style="text-align: right;">Page 218</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. So you think you could have an</p> <p>3 effective system at CVS for the dispensing of</p> <p>4 controlled substances that's not electronically</p> <p>5 based?</p> <p>6 MS. MILLER: Objection to form.</p> <p>7 A. Again, I don't think I'm -- when you</p> <p>8 say dispensing of controlled substances at the</p> <p>9 pharmacy, I don't know the processes well enough</p> <p>10 to make that assumption.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. I'm just talking generally. I mean,</p> <p>13 CVS dispenses millions and millions if not</p> <p>14 billions of prescriptions in a given year,</p> <p>15 right?</p> <p>16 MS. MILLER: Objection to form.</p> <p>17 A. I don't know the exact number that we</p> <p>18 dispense.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Well, would you agree it's in the</p> <p>21 millions or higher?</p> <p>22 MS. MILLER: Objection to form.</p> <p>23 A. I haven't seen exact data on the</p> <p>24 number of prescriptions dispensed.</p>	<p style="text-align: right;">Page 220</p> <p>1 Q. Anyone recommend we should, instead of</p> <p>2 having electronic system, go back to paper?</p> <p>3 MS. MILLER: Objection to form.</p> <p>4 A. I don't recall any specific</p> <p>5 conversations around a manual system or</p> <p>6 electronic system and how we should operate.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Because that would be crazy, right?</p> <p>9 MS. MILLER: Objection to form.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. It would be crazy to try to use a</p> <p>12 manual paper system for all these drugs orders,</p> <p>13 wouldn't it?</p> <p>14 MS. MILLER: Objection to form.</p> <p>15 A. I can't say that.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. I'm going to -- if we go back to item</p> <p>18 number 14, did CVS have a system in place in</p> <p>19 November of 2012 to monitor for orders for</p> <p>20 controlled substances made by pharmacies to</p> <p>21 outside vendors?</p> <p>22 MS. MILLER: Objection to form.</p> <p>23 A. I don't recall what the process was in</p> <p>24 2012 in terms of outside vendor orders.</p>
<p style="text-align: right;">Page 219</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. So it could be less than a million?</p> <p>3 MS. MILLER: Objection to form.</p> <p>4 A. I haven't seen the exact numbers of</p> <p>5 how much CVS dispenses in a given year.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. What's your best estimate?</p> <p>8 MS. MILLER: Objection to form.</p> <p>9 A. Again, I haven't seen numbers, so I</p> <p>10 wouldn't even be able -- be comfortable guessing</p> <p>11 the number.</p> <p>12 BY MR. ELSNER:</p> <p>13 Q. Well, you were developing a suspicious</p> <p>14 order monitoring system for the distribution</p> <p>15 centers, and you have no idea what the volume is</p> <p>16 that CVS is distributing. You don't even know</p> <p>17 if you need an electronic system, or could use a</p> <p>18 manual system, right?</p> <p>19 MS. MILLER: Objection to the form.</p> <p>20 A. I wasn't the one developing the</p> <p>21 system. I was on a team or part of a team that</p> <p>22 was working to implement a new or enhanced</p> <p>23 system.</p> <p>24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 221</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Did you understand -- you understand</p> <p>3 that reviewing outside vendor orders for</p> <p>4 controlled substances would be an -- important</p> <p>5 to know so that you know how many controlled</p> <p>6 substances a particular pharmacy was ordering,</p> <p>7 correct?</p> <p>8 MS. MILLER: Objection to form.</p> <p>9 A. Outside vendor orders is a piece of</p> <p>10 information that can be utilized, but that is</p> <p>11 not the only piece of information that can be</p> <p>12 utilized.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. No, I understand that. But it would</p> <p>15 be important to know, wouldn't it, from a due</p> <p>16 diligence perspective? If the pharmacy was</p> <p>17 ordering hydrocodone products from you, it would</p> <p>18 be important to know whether that pharmacy was</p> <p>19 also ordering hydrocodone products from other</p> <p>20 outside vendors at the same time, right?</p> <p>21 MS. MILLER: Objection to form.</p> <p>22 A. You mean -- you keep saying</p> <p>23 "important." I don't know what you mean by</p> <p>24 important. But it's a piece of information that</p>

<p style="text-align: right;">Page 222</p> <p>1 can be utilized.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Should it be?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. I don't think it necessarily has to</p> <p>6 be.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Do you have a system to monitor that</p> <p>9 today?</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. My understanding of the system today</p> <p>12 is that outside vendor orders are taken into</p> <p>13 consideration.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. Why?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. Because that's the decision that was</p> <p>18 made.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Why?</p> <p>21 MS. MILLER: Object to form, and to</p> <p>22 the extent -- objection on attorney/client</p> <p>23 privilege to the extent you -- an answer would</p> <p>24 involve disclosing communications with counsel.</p>	<p style="text-align: right;">Page 224</p> <p>1 as Schiavo 13. So this is another year-end</p> <p>2 review. This is the one that's finalized. It's</p> <p>3 dated 3/04/2014.</p> <p>4 Do you see that?</p> <p>5 A. I see where it says that.</p> <p>6 Q. Okay. And it lists Craig Schiavo, is</p> <p>7 that right?</p> <p>8 A. I see my name.</p> <p>9 Q. Okay. If you turn to Page 3 of 9,</p> <p>10 which is 120582.</p> <p>11 A. Okay.</p> <p>12 Q. Do you see under the -- there's some</p> <p>13 bullets on the right-hand side of the page.</p> <p>14 There's a bullet that begins "The Suspicious</p> <p>15 Order Monitoring SOP."</p> <p>16 Do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. And it says that "Aaron Burtner and I</p> <p>19 worked together to draft and implement our</p> <p>20 current SOM policies and procedures, as well as</p> <p>21 have completed the draft of our enhanced SOM SOP</p> <p>22 for when the system goes live in February."</p> <p>23 That's what you did with Aaron</p> <p>24 Burtner, correct?</p>
<p style="text-align: right;">Page 223</p> <p>1 A. I don't recall who made that final</p> <p>2 decision.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. Do you understand why it was made?</p> <p>5 MS. MILLER: Same objection, and</p> <p>6 object to form.</p> <p>7 A. I don't recall who made the decision.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Okay. I'm going to put before you</p> <p>10 Exhibit 13.</p> <p>11 (Whereupon, CVS-Schiavo-13 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. Well, let me ask. That was a new</p> <p>15 system, though. It's now an enhanced system to</p> <p>16 monitor outside vendor orders for controlled</p> <p>17 substances. That wasn't in the prior system,</p> <p>18 right?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. It is part of the new system. And I</p> <p>21 can't speak to whether or not that was part of</p> <p>22 the old system. It might have been.</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. I'm going to mark this next document</p>	<p style="text-align: right;">Page 225</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. That's what this says. And I'm sure I</p> <p>3 worked with Aaron Burtner, but I don't think we</p> <p>4 were the only two who reviewed that policy or</p> <p>5 drafted that policy.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. But you said that you worked with</p> <p>8 Aaron Burtner to draft and implement that</p> <p>9 policy, correct?</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. This looks to be my year-end review</p> <p>12 for 2013. If I went into the details of</p> <p>13 everyone that I worked with and everything that</p> <p>14 I did, that would -- I might still be writing</p> <p>15 this document. So this doesn't include</p> <p>16 everything that I did and everyone that I worked</p> <p>17 with.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. But you worked on it and you wrote it</p> <p>20 with Aaron Burtner and maybe some other people,</p> <p>21 right?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I don't know exactly which policy this</p> <p>24 is referring to.</p>

<p style="text-align: right;">Page 226</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. If you go further down, three bullets</p> <p>3 down, it reads "Grouping the Controlled</p> <p>4 Substance Drug Families to categorize the</p> <p>5 potential level of diversion for the SOM System.</p> <p>6 These groups will determine how each drug family</p> <p>7 is analyzed in the SOM algorithm."</p> <p>8 Did you do that?</p> <p>9 MS. MILLER: Object to the form.</p> <p>10 A. I don't believe -- I don't recall</p> <p>11 being part of the -- I don't recall being the</p> <p>12 person that did that.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. That's what you wrote, right, that you</p> <p>15 grouped the controlled substance drug families</p> <p>16 to categorize the potential level of diversion</p> <p>17 for the SOM system? That's what you wrote in</p> <p>18 your review, correct?</p> <p>19 A. I see at the very beginning it says "I</p> <p>20 participated in," that last bullet says</p> <p>21 "Grouping the Controlled Substance Drug</p> <p>22 Families." That is not something I recall</p> <p>23 having significant input in.</p> <p>24 Q. Well, on the top right before the</p>	<p style="text-align: right;">Page 228</p> <p>1 time you were grouping together controlled</p> <p>2 substances in the SOM so that you could have</p> <p>3 stop orders in effect by drug family as opposed</p> <p>4 to individual drug, correct?</p> <p>5 MS. MILLER: Object to form.</p> <p>6 A. I don't recall, and I don't see where</p> <p>7 this would indicate that we were not doing it in</p> <p>8 the past.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. Were you doing it in the past? Why</p> <p>11 would you be grouping them now if you already</p> <p>12 had them grouped?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I don't recall, and I wasn't familiar</p> <p>15 with how the system looked at it in the past.</p> <p>16 It says here that one of the things that I</p> <p>17 participated in at some level was grouping of</p> <p>18 the controlled substances.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. By family group, right, as opposed to</p> <p>21 by individual drug?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. It says "Grouping Controlled Substance</p> <p>24 Drug Families."</p>
<p style="text-align: right;">Page 227</p> <p>1 first bullet we read -- it says "Some of the</p> <p>2 main milestones that I participated in</p> <p>3 achieving, or was responsible for their</p> <p>4 completion were," and then it lists all these</p> <p>5 different bullets, and one of the bullets you</p> <p>6 list is one of the main milestones that you</p> <p>7 participated in achieving or were responsible</p> <p>8 for completing was to group the controlled</p> <p>9 substance drug families to categorize the</p> <p>10 potential level of diversion for the SOM system.</p> <p>11 Is that what you wrote?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I don't remember writing this and</p> <p>14 reading the way that it's written at the time.</p> <p>15 I'm saying that I participated in. I don't see</p> <p>16 anywhere where I indicate the level of my</p> <p>17 participation. The last bullet says grouping of</p> <p>18 controlled substances, and I don't see in there</p> <p>19 the level of my participation, and I don't</p> <p>20 recall my level of participation, but I don't</p> <p>21 believe that it was something that I provided</p> <p>22 significant input on.</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. This indicates that at this point in</p>	<p style="text-align: right;">Page 229</p> <p>1 Q. By drug families.</p> <p>2 MR. ELSNER: This is Exhibit 14.</p> <p>3 (Whereupon, CVS-Schiavo-14 was marked</p> <p>4 for identification.)</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. This is your midyear review from 2013,</p> <p>7 last updated September 18, 2013. Do you see it</p> <p>8 lists your name, Craig Schiavo? Is that right?</p> <p>9 A. I do.</p> <p>10 Q. Can I ask you to turn to Page 3 of 7?</p> <p>11 A. Okay.</p> <p>12 Q. I ask you to -- this is another</p> <p>13 listing of bullets of things in your midyear</p> <p>14 review. And there's a bullet towards the</p> <p>15 bottom, sort of the last bullet. It begins</p> <p>16 "Quarantine Policy and Procedure."</p> <p>17 Do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. Okay. And it says "Worked closely</p> <p>20 with Pharmacy Ops to create the policy on what</p> <p>21 to do if an Outside Vendor Order of Interest is</p> <p>22 deemed to be suspicious."</p> <p>23 Did I read that correctly?</p> <p>24 A. That is what this says.</p>

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1 Q. Okay. So were you involved in
2 creating a policy for suspicious orders related
3 to outside vendors of controlled substances?
4 MS. MILLER: Object to form.
5 A. I don't ever remember creating a
6 policy around -- I don't ever remember creating
7 a quarantine policy and procedure around outside
8 vendor orders, nor do I remember that being
9 something that we had ever implemented.
10 BY MR. ELSNER:
11 Q. Do you know whether there was a system
12 in place at CVS in November of 2012 to track
13 outside vendor orders of controlled substances?
14 MS. MILLER: Object to form.
15 A. I don't recall how outside vendor
16 orders were looked at in that time frame.
17 BY MR. ELSNER:
18 Q. If you go back to the prior year-end
19 review, the exhibit just before this one dated
20 March 4, 2014, and if you turn to Page 7 of 9.
21 The third bullet down on the right-hand side of
22 the page beginning with "Controlled Substance
23 SOP."
24 Do you see that?

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1 A. I do.
2 Q. It says "I am currently working to
3 create an SOP that covers all Controlled
4 Substance Activities in our Pharmacies. To
5 date, the initial draft of this SOP was provided
6 to Legal for feedback which was received back
7 requesting for us to expand the scope from just
8 dispensing to all controlled substance
9 activities. The second draft of this SOP will
10 be ready for review by the middle of January of
11 2014." Did I read that correctly?
12 A. Looks to be that's what it says.
13 Q. Okay. So you were creating a standard
14 operating procedure for controlled substance
15 activities at all CVS pharmacies in 2013 with
16 the hope that a second draft of the policy would
17 be ready by January, 2014, is that right?
18 MS. MILLER: Object to form. Object
19 on attorney/client privilege grounds.
20 You may answer to the extent you can
21 do so without revealing communications with
22 counsel.
23 A. So this policy, I don't remember what
24 the feedback from legal was, but I do

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1 remember --
2 MS. MILLER: Objection. I'm going
3 to --
4 BY MR. ELSNER:
5 Q. I'm not asking --
6 MS. MILLER: Yeah, and I'm going to --
7 BY MR. ELSNER:
8 Q. I'm not asking you what the feedback
9 from legal was. What I want to know is just
10 that you were working on this policy and it was
11 not finalized as of January of 2014.
12 MS. MILLER: Mike, I'd just like to
13 say on the record, I think for that sentence
14 related to legal that we would want to redact
15 that and claw that back.
16 MR. ELSNER: I don't think it --
17 MS. MILLER: Yeah, I'm going to say --
18 MR. ELSNER: -- discloses a privilege,
19 but --
20 MS. MILLER: I'm going to say on the
21 record, you don't want to go into it, you just
22 said. I'm just making a record.
23 BY MR. ELSNER:
24 Q. Why don't I reread it, and I'll read

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1 it without that in there. The year-end review
2 for -- dated March 4, 2014 stated that the
3 controlled -- you were working on the controlled
4 substance SOP, standard operating procedure. "I
5 am currently working to create an SOP that
6 covers all Controlled Substance Activities in
7 our Pharmacies." Is that true in 2013?
8 A. I don't remember this specific time
9 frame or specifically the policy this is
10 referring to.
11 Q. Well, was there a policy at CVS in
12 2013 before you started working on it to monitor
13 for controlled substance activities at
14 pharmacies?
15 MS. MILLER: Object to form.
16 A. I know that there were policies at CVS
17 that covered controlled substance related
18 activities.
19 BY MR. ELSNER:
20 Q. Was there a standard operating
21 procedure that related to controlled substance
22 activities in pharmacies at CVS?
23 MS. MILLER: Object to form.
24 A. I believe there were many policies

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1 that addressed controlled substances in them.
2 BY MR. ELSNER:
3 Q. The system that you -- the description
4 that you wrote as item 15 in your enhancements
5 document lists OV and DC orders don't get
6 reviewed and monitored together. So there
7 needed to be a system that would review outside
8 vendor orders along with the orders from the
9 distribution center together in order to create
10 an effective monitoring system, is that true?
11 MS. MILLER: Object to form.
12 A. I don't believe that is required to
13 have an effective system, no.
14 BY MR. ELSNER:
15 Q. Would you agree that one element of a
16 know your customer procedure is knowing whether
17 your pharmacy customer is ordering controlled
18 substances from multiple vendors?
19 MS. MILLER: Object to form.
20 A. I don't believe that that must be a
21 part of a suspicious order monitoring system.
22 BY MR. ELSNER:
23 Q. Do you agree that understanding the
24 amount of opioids purchased by a pharmacy is

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1 only useful if you know if they are purchasing
2 opioids from other vendors?
3 MS. MILLER: Object to form.
4 A. I don't believe that you need to know
5 that in order to have an effective system.
6 BY MR. ELSNER:
7 Q. Would you agree with me it would be
8 important to have that information to have an
9 effective suspicious order monitoring system?
10 MS. MILLER: Object to form.
11 A. I'm not sure what you mean by
12 important, but it's not necessary. I don't
13 believe that it's necessary.
14 BY MR. ELSNER:
15 Q. So you could do without it?
16 MS. MILLER: Object to form.
17 A. What I'm saying is I don't necessarily
18 believe that you have to have it.
19 BY MR. ELSNER:
20 Q. Right. You're saying you don't need
21 it, it could be left out, right?
22 MS. MILLER: Object to form.
23 A. What I'm saying is I don't believe it
24 is a required element to have in order to have

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1 an effective system.
2 MR. ELSNER: Let's mark Exhibit 15,
3 Schiavo 15.
4 (Whereupon, CVS-Schiavo-15 was marked
5 for identification.)
6 BY MR. ELSNER:
7 Q. This is another e-mail from you to Tom
8 Bourque dated January 22, 2013, and the subject
9 is "Importance of Incorporating OV Orders."
10 That's outside vendor orders. Did I read that
11 correctly?
12 A. That's what it says.
13 Q. Okay. And it says "Tom, For the
14 meeting with Pawlik today. Thanks, Craig."
15 Who is Pawlik?
16 A. That is Tom Pawlik who Tom Bourque
17 reported up to. He was the VP of compliance.
18 Q. And there's an attachment, and the
19 attachment is the "Importance of Incorporating
20 OV Orders," correct? Is that right?
21 MS. MILLER: Object to form.
22 A. The title is "Importance of
23 Incorporating OV Orders Into the SOM."
24 BY MR. ELSNER:

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1 Q. "Into the SOM Algorithm," correct?
2 A. That's what it says.
3 Q. Okay. And written here is why it's
4 needed, and the first bullet is the "DEA 'Know
5 Your Customer' Requirements," right?
6 MS. MILLER: Object to form.
7 A. It says "DEA 'Know Your Customer'
8 Requirements."
9 BY MR. ELSNER:
10 Q. So one of the reasons why you need to
11 incorporate outside vendor orders into the
12 suspicious order monitoring algorithm is to
13 comply with the DEA's know your customer
14 requirements, right?
15 MS. MILLER: Object to the form.
16 A. I don't believe that is a required
17 element in order to know your customer.
18 BY MR. ELSNER:
19 Q. But that's what you wrote in this
20 memo, correct?
21 MS. MILLER: Object to form.
22 A. I don't remember writing this. I see
23 what it says, why it is needed, and I see that
24 it says "DEA 'Know Your Customer' Requirements."

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1 BY MR. ELSNER:
2 Q. Okay. And under number two it reads
3 "In order for dispensing data contained in the
4 algorithm to be useful, we must account for all
5 controlled substances ordered." Is that what it
6 says?
7 MS. MILLER: Object to form.
8 A. That is what it says. But I know that
9 you do not need to have outside vendor orders
10 incorporated into a system in order to have an
11 effective system, where it says we must account
12 for all controlled substances ordered.
13 BY MR. ELSNER:
14 Q. But you wrote that in these bullets,
15 right?
16 MS. MILLER: Object to form.
17 A. I don't remember drafting this
18 document. That is what the bullet says.
19 BY MR. ELSNER:
20 Q. Okay. Just so you know, we have the
21 metadata on these documents, if your counsel
22 didn't know, so it's not that we can sit around
23 and craft up and create documents. We didn't
24 make up documents, okay? These are the

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1 documents produced from your files to us as part
2 of CVS's obligation. Do you understand that?
3 MS. MILLER: Object to form.
4 BY MR. ELSNER:
5 Q. Do you understand that's how this
6 works?
7 MS. MILLER: Object to form.
8 A. I understand that this is a document
9 provided to you by CVS.
10 BY MR. ELSNER:
11 Q. From your files.
12 MS. MILLER: Object to form.
13 A. I have no reason to believe that
14 that's not true.
15 BY MR. ELSNER:
16 Q. Okay. Under the second item it lists
17 "Potential Issues If Not Accounted For In
18 Realtime." Did I read that correctly?
19 A. "Potential Issues If Not Accounted For
20 In Realtime."
21 Q. And it reads that one issue -- one
22 potential issue under bullet one is a "Store may
23 order a little from both the outside vendor and
24 the distribution center to stay under the

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1 radar." Is that what it reads?
2 MS. MILLER: Object to form.
3 A. That is what that first bullet says.
4 BY MR. ELSNER:
5 Q. Okay. And would you agree that that's
6 a potential issue, that a store could order a
7 little bit from the distribution center and a
8 little bit from outside vendors and stay under
9 the detection radar of the algorithm?
10 MS. MILLER: Object to form.
11 A. I don't know that to be true. I don't
12 know what algorithm we're referring to. This is
13 very early in the process. OV orders are
14 something that we discussed. This is a document
15 going over potential issues as I read this.
16 BY MR. ELSNER:
17 Q. And then under number three bullet,
18 potential issues, "If we bring in the outside
19 vendor data later in the process, we may ship a
20 potentially reportable suspicious order from our
21 distribution center." Did I read that
22 correctly?
23 MS. MILLER: Object to form.
24 A. I see that written under "Potential

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1 Issues If Not Accounted For In Realtime."
2 BY MR. ELSNER:
3 Q. Okay. And then the last bullet in
4 that section, the last main bullet, "Stores can
5 place phone orders which we have no visibility
6 to until a later time." Did I read that
7 correctly?
8 A. That is what it says there, although I
9 don't ever remember that being a process at CVS.
10 Q. Exactly.
11 So under that it says currently we
12 have a store which had a 68,000 hydrocodone pill
13 loss and they were placing phone orders to
14 outside vendors. Did I read that correctly?
15 MS. MILLER: Object to form.
16 A. That is what that says.
17 BY MR. ELSNER:
18 Q. Were you aware that there was a CVS
19 Pharmacy that had a 68,000 hydrocodone pill
20 loss?
21 A. I don't recall this loss.
22 Q. Do you remember what pharmacy it was,
23 or what state it was in?
24 MS. MILLER: Object to form.

<p style="text-align: right;">Page 242</p> <p>1 A. No, I don't recall.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. When a pharmacy has a theft like that</p> <p>4 or a loss like that of 68,000 pills of</p> <p>5 hydrocodone, the system would stop sending those</p> <p>6 hydrocodone pills from the distribution center,</p> <p>7 right?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. The SOM system under -- in 2013, I</p> <p>10 think, when this was drafted, I don't know</p> <p>11 exactly how it was designed or exactly what it</p> <p>12 looked at, but I do know that at CVS we had a</p> <p>13 policy to report controlled substance losses or</p> <p>14 thefts or armed robberies. And if this turned</p> <p>15 out to be a loss, which I don't recall, this</p> <p>16 could have turned out to not be a loss and</p> <p>17 incorrect, then I'm confident that we reported</p> <p>18 it to the DEA, and I'm confident that whatever</p> <p>19 remediations needed to be put in place were put</p> <p>20 in place.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. So it was a requirement in your</p> <p>23 understanding at this point in time that if</p> <p>24 there was a 68,000-pill loss for a controlled</p>	<p style="text-align: right;">Page 244</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Okay. And would this qualify as a</p> <p>3 significant loss?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. I think 68,000 pills is a significant</p> <p>6 loss of hydrocodone if, in fact, this is</p> <p>7 accurate, which I don't know it to be.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Okay. And would it concern you that</p> <p>10 if you had a CVS Pharmacy that had a 68,000</p> <p>11 hydrocodone pill loss, if that pharmacy was</p> <p>12 placing additional orders by phone with outside</p> <p>13 vendors other than through CVS's distribution</p> <p>14 center?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. Not knowing any other information on</p> <p>17 this loss, no.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. It would not concern you if a CVS</p> <p>20 Pharmacy had a 68,000 hydrocodone pill loss,</p> <p>21 that pharmacy couldn't order any more</p> <p>22 hydrocodone from the distribution center, and</p> <p>23 that pharmacy was placing orders to outside</p> <p>24 vendors to get hydrocodone shipped to them, that</p>
<p style="text-align: right;">Page 243</p> <p>1 substance that it was an obligation for CVS to</p> <p>2 report it to the DEA, right?</p> <p>3 MS. MILLER: Object to form.</p> <p>4 A. CVS reports substantial losses of</p> <p>5 controlled substances to the DEA.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. So you're confident it was done here</p> <p>8 because that's a requirement, but you don't know</p> <p>9 for sure?</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. I'm confident that whatever situation</p> <p>12 or store that is being referred to here, that I</p> <p>13 don't know what store, what the situation was,</p> <p>14 what kind of loss or even if there was a loss,</p> <p>15 I'm sure that CVS -- I'm very confident that CVS</p> <p>16 complied with whatever they needed to do to</p> <p>17 deal.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. I want to make sure. Is it CVS's</p> <p>20 policy at this time to report to the DEA a loss</p> <p>21 of controlled substances of this size?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I understand that CVS is required to</p> <p>24 report significant losses.</p>	<p style="text-align: right;">Page 245</p> <p>1 would not concern you?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. I feel like you're assuming that this</p> <p>4 store could not place an order to our DC and</p> <p>5 could only place an order to the OV, and I don't</p> <p>6 know that to be the case, so I can't answer that</p> <p>7 question.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Well, if that were true, would that</p> <p>10 concern you?</p> <p>11 MS. MILLER: Object to form.</p> <p>12 A. You're asking me to assume, and I</p> <p>13 don't have enough information to assume.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. It's a hypothetical. There's a 68,000</p> <p>16 hydrocodone pill loss, and that pharmacy</p> <p>17 couldn't get any more from the distribution</p> <p>18 center because the distribution center was</p> <p>19 investigating that, and then that same pharmacy</p> <p>20 ordered from an outside vendor more hydrocodone.</p> <p>21 Under that hypothesis or -- would that concern</p> <p>22 you?</p> <p>23 MS. MILLER: Object to form.</p> <p>24 A. Even in that hypothetical situation</p>

<p style="text-align: right;">Page 246</p> <p>1 that you laid out, I still cannot make the 2 determination that I would be concerned. 3 BY MR. ELSNER: 4 Q. It says underneath that bullet that 5 the BOP requested phone records to identify the 6 orders placed in the store from the outside 7 vendor. What is BOP? 8 A. I believe that refers to the Board of 9 Pharmacy. 10 Q. Did you know that the Board of 11 Pharmacy had actually requested the phone 12 records to identify the orders placed by this 13 particular CVS store from outside vendors? 14 MS. MILLER: Object to form. 15 A. Again, I don't recall this loss, I 16 don't recall the store, I don't recall the 17 state. It does say that on the document. 18 BY MR. ELSNER: 19 Q. And that's the document you wrote, 20 correct? You wrote this document? 21 MS. MILLER: Object to form. 22 A. I don't recall writing this document. 23 I see that I did send the document to Tom 24 Bourque.</p>	<p style="text-align: right;">Page 248</p> <p>1 whether you agreed with the statement that the 2 SOM algorithm will be better equipped to 3 identify a potential suspicious order, 4 minimizing the risk of shipping potential 5 suspicious orders. Would you agree with that? 6 MS. MILLER: Object to form. 7 A. I cannot -- I can't say that's an 8 accurate statement because this early in the 9 process I didn't know all aspects that would be 10 part of the system that we were building, so I 11 don't know if that's an accurate statement 12 because there's a lot of other things that 13 potentially could have been put in the system 14 that would have done just as effective of a job. 15 BY MR. ELSNER: 16 Q. You wouldn't even agree that adding it 17 to the system would make the system more 18 effective? 19 MS. MILLER: Objection to form. 20 A. I agree that adding OV is a potential 21 element that someone could use when reviewing an 22 order. 23 BY MR. ELSNER: 24 Q. When did CVS, to your knowledge, have</p>
<p style="text-align: right;">Page 247</p> <p>1 BY MR. ELSNER: 2 Q. And then there's a listing here of 3 "Other Positives With Accounting for Outside 4 Vendor Orders." Do you see that as another 5 bold? 6 A. I see that. 7 Q. And listed there at the very end is 8 that the "SOM algorithm will have be better 9 equipped to identify a potential suspicious 10 order, minimizing the risk of shipping a 11 potential suspicious order." 12 MS. MILLER: Object to form. 13 A. I see where it says that. 14 BY MR. ELSNER: 15 Q. Do you agree with that? 16 MS. MILLER: Object to form. 17 A. I don't agree that including OV orders 18 is the only way that you could potentially 19 identify suspicious orders and minimizing risk 20 of shipping a potential suspicious order. I 21 don't believe that is the only way to do that, 22 no. 23 BY MR. ELSNER: 24 Q. That's not what I said. I asked you</p>	<p style="text-align: right;">Page 249</p> <p>1 a fully operational system to -- in place to 2 monitor orders from other vendors as required by 3 the DEA's know your customer policy? 4 MS. MILLER: Object to form. 5 A. So I don't know of having outside 6 vendor orders is a requirement of the DEA and 7 know your customer. I don't know that to be 8 true. Or I don't know that to be true. And I 9 don't know when CVS started utilizing outside 10 vendors. 11 BY MR. ELSNER: 12 Q. What's your best estimate? 13 A. I don't know. I don't recall when 14 they started using it. 15 Q. Did CVS have a system in place at this 16 point in time to monitor for drugs for 17 controlled substances dispensed from its 18 pharmacies? 19 MS. MILLER: Object to form. 20 A. I don't recall how CVS monitored at 21 this time controlled substances dispensed from 22 their pharmacies. I don't recall the process. 23 BY MR. ELSNER: 24 Q. Did you work on a process like that at</p>

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1 CVS?
2 MS. MILLER: Object to form.
3 A. I was involved in a project that
4 focused on controlled substance dispensing.
5 BY MR. ELSNER:
6 Q. When was that?
7 A. I don't recall when I started working
8 on that.
9 Q. 2013, '14?
10 A. I honestly don't recall the date.
11 Q. Was there a system in place when you
12 started working on that?
13 MS. MILLER: Object to form.
14 A. I don't recall how CVS monitored
15 dispensing at our retail pharmacies.
16 BY MR. ELSNER:
17 Q. I'm going to show you what we've
18 marked as Schiavo 16.
19 (Whereupon, CVS-Schiavo-16 was marked
20 for identification.)
21 BY MR. ELSNER:
22 Q. The bottom e-mail is an e-mail that
23 you sent to Tom Bourque dated January 15, 2014,
24 the subject is the "SOM Presentation 1-16-2014,"

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1 correct?
2 A. I see that.
3 Q. Okay. And you write "Tom, As I was
4 driving home last night I thought of some
5 additional things I wanted to add. Attached are
6 the updates."
7 And then there's a response from Tom
8 to you a few hours later on January 15, 2014,
9 and the attachment is the SOM presentation
10 1-16-14.
11 Do you see that?
12 A. I see that.
13 Q. Then he says "Craig, This is good. I
14 added our department organization chart to the
15 front. I will speak to it, as well as roles and
16 responsibilities of our team, and how each
17 department works together...then I'll turn it
18 over to you to finish, and after the deck, go
19 through Archer SOM system highlights.
20 "Let's make sure we have a projector
21 and copies for all the attendees." Correct?
22 A. I see where it says that.
23 Q. Okay. And then attached is PowerPoint
24 presentation for "Suspicious Order Monitoring

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1 January 16, 2014," and you and Tom are listed on
2 the first page of the PowerPoint, is that right?
3 A. I see both of our names there.
4 Q. Okay. And you worked on this
5 PowerPoint, correct?
6 A. Can I flip through it?
7 Q. Sure. I mean, you reference the fact
8 that you added things to it in the e-mail.
9 MS. MILLER: Do you have a better copy
10 of this? I know this is as produced --
11 MR. ELSNER: I was going to ask you.
12 I'd like it in native. Do you have it?
13 MS. MILLER: Keep looking at it. But
14 it's over --
15 BY MR. ELSNER:
16 Q. If it's helpful, we can pull up some
17 sections. I'm going to go through it with you.
18 MS. MILLER: Why don't you flip
19 through it. It's hard to read, so you can
20 always look at the screen.
21 A. The e-mail indicates I had input into
22 this document. I don't know exactly what my
23 input was.
24 BY MR. ELSNER:

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1 Q. Okay. And the first, or slide 3 is
2 a -- there's a page there and it lists DEA's
3 expectations.
4 Do you see that?
5 A. I see where it says that.
6 Q. If you turn to Page 6 of the
7 PowerPoint under "Keys to an Effective SOM
8 Program."
9 Do you see that?
10 A. I see that.
11 Q. And the first thing listed there is to
12 "Know Your Customer. The DEA expects
13 registrants to 'Know Your Customer' and even to
14 Know Your Customers Customer...No order should
15 be released unless the team is comfortable that
16 it is for legitimate purposes." Correct?
17 MS. MILLER: Object to form.
18 A. I see where it says that.
19 BY MR. ELSNER:
20 Q. And then it goes on, there's a whole
21 section on documentation, is that right?
22 There's a number of bullets there.
23 Was it CVS's policy that any kind of
24 correspondence and due diligence would be

<p style="text-align: right;">Page 254</p> <p>1 documented in their systems?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. I know that in our current system</p> <p>4 documentation is something that we do and we</p> <p>5 keep. I don't know if there's any specifics</p> <p>6 around what documents need to be kept.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. If you look at Page 9 of the</p> <p>9 presentation and to "Key Takeaways," it reads</p> <p>10 "Documentation, Documentation, Documentation"</p> <p>11 with three or four exclamation marks all in caps</p> <p>12 and all bolded, correct?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I see where it says that, and it looks</p> <p>15 like it's bolded.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Okay. And then beneath that it says</p> <p>18 "Documenting all activities that lead to the</p> <p>19 disposition of an order is key to a defensible</p> <p>20 SOM Program." Did I read that correctly?</p> <p>21 A. You read that correctly.</p> <p>22 Q. "If it is not documented, it was not</p> <p>23 done." Is that what you wrote?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 256</p> <p>1 A. I don't know how important audit is to</p> <p>2 have an effective program. I don't think that</p> <p>3 makes a program effective.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. In order to determine whether a</p> <p>6 program is acting effectively, one way to do</p> <p>7 that would be audit the program, right?</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. I assume that is one way to do it. I</p> <p>10 don't think that's the only way to do it.</p> <p>11 BY MR. ELSNER:</p> <p>12 Q. Did you ever review any audit records</p> <p>13 of CVS's suspicious order monitoring system in</p> <p>14 2012 or 2013 to determine its effectiveness?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. I don't recall there being any audit</p> <p>17 documentation that I reviewed.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Do you know whether any was done?</p> <p>20 MS. MILLER: Object to form and</p> <p>21 attorney/client privilege grounds.</p> <p>22 You may answer to the extent it</p> <p>23 doesn't reveal any attorney/client</p> <p>24 communications.</p>
<p style="text-align: right;">Page 255</p> <p>1 A. I don't know if I wrote that.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Is that in the presentation?</p> <p>4 A. That is what it says there, although I</p> <p>5 don't know how accurate that is, that if it was</p> <p>6 not documented it was not done.</p> <p>7 Q. But you would agree, though, it is</p> <p>8 important to document the due diligence work</p> <p>9 that was being undertaken as part of your</p> <p>10 suspicious order monitoring program, correct?</p> <p>11 MS. MILLER: Object to form.</p> <p>12 A. There is a documentation piece to our</p> <p>13 process.</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. And why is it there?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. Because the company made a decision</p> <p>18 that we were going to document parts of our due</p> <p>19 diligence process.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Well, would you agree with me that</p> <p>22 audit is an important component of any kind of</p> <p>23 program or system that you have in place?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 257</p> <p>1 A. In 2012, 2013, I don't recall.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Is it done today?</p> <p>4 MS. MILLER: Same objection, and</p> <p>5 object to form.</p> <p>6 A. I'm not familiar with the audit</p> <p>7 process and everything that is audited.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Okay. It says on Page 8 of the</p> <p>10 PowerPoint under "DEA Reporting Requirements" at</p> <p>11 the very top, it says "CVS is obligated to</p> <p>12 report orders determined to be Suspicious that</p> <p>13 were placed to our Distribution Centers," and</p> <p>14 "placed to our distribution centers" is</p> <p>15 underlined and in bold, correct?</p> <p>16 A. I see that it is underlined, and it</p> <p>17 appears that at least part of it is in bold.</p> <p>18 Q. Okay. And then if you look down to</p> <p>19 the third bolded item, it reads that "Orders</p> <p>20 that are placed to an Outside Vendor that we</p> <p>21 identify as an order deviating from the normal</p> <p>22 size, frequency, and/or buying pattern and</p> <p>23 deemed to not be for legitimate purposes or are</p> <p>24 at the risk of being diverted are not required</p>

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1 to be reported to the DEA."
2 Did I read that correctly?
3 MS. MILLER: Object to form.
4 A. That's what it says, but I don't know
5 how we would identify an order placed to an
6 outside vendor deviating from normal size,
7 frequency, but I don't believe that part of our
8 process monitoring specific orders to the OV
9 when they are placed.
10 BY MR. ELSNER:
11 Q. So I guess my first question is, does
12 CVS have a system in place to monitor the orders
13 that are being placed by its pharmacies, whether
14 from the distribution center or to outside
15 vendors for controlled substances?
16 MS. MILLER: Object to form.
17 A. I know that CVS monitors orders of
18 controlled substances.
19 BY MR. ELSNER:
20 Q. From its pharmacies?
21 A. From its retail pharmacies.
22 Q. Okay. And it monitors them for
23 suspicious size, frequency, is that right?
24 MS. MILLER: Object to form.

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1 A. So current process today, CVS has a
2 suspicious order monitoring system that was
3 designed to monitor orders placed to our
4 distribution centers from our pharmacies, and
5 part of that monitoring is for orders of unusual
6 size, frequency, and buying pattern.
7 BY MR. ELSNER:
8 Q. But that's a system for the
9 distribution center to monitor the pharmacies'
10 orders from the distribution center, correct?
11 These are not -- it's not a process that's
12 monitoring the pharmacies' orders from Cardinal
13 or McKesson or other outside vendors, correct?
14 MS. MILLER: Object to form.
15 A. Well, we monitor orders of controlled
16 substances placed by our pharmacies.
17 BY MR. ELSNER:
18 Q. From outside vendors?
19 MS. MILLER: Object to form.
20 A. We order -- we monitor orders from our
21 pharmacies to outside vendors and to our
22 distribution centers. As part of our
23 distribution center process, outside vendor
24 information is taken into consideration.

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1 BY MR. ELSNER:
2 Q. Okay. And so when did that begin?
3 MS. MILLER: Object to form.
4 BY MR. ELSNER:
5 Q. I mean, that's part of the new system
6 that was created and put into place in 2014, is
7 that right?
8 MS. MILLER: Object to form.
9 A. That is part of our new system, but
10 that's not to say it was not part of our old
11 system or our old due diligence process.
12 BY MR. ELSNER:
13 Q. You don't know one way or the other
14 whether it was?
15 MS. MILLER: Object to form.
16 A. I don't recall when CVS started
17 utilizing outside vendor orders.
18 BY MR. ELSNER:
19 Q. Regardless, though, it was CVS's
20 policy that when reviewing orders to outside
21 vendors, if CVS identified an order that
22 deviated from the normal size, frequency or
23 buying pattern from the outside vendor, it was
24 CVS's policy not to report that to the DEA, is

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1 that right?
2 MS. MILLER: Object to form.
3 A. I honestly don't know of that to be in
4 any policy that we have.
5 BY MR. ELSNER:
6 Q. I'm sure it's not.
7 It was CVS's practice, wasn't it, that
8 if it discovered an order to an outside vendor
9 for a controlled substance and you discovered
10 that that order was not of its normal size,
11 frequency, or buying pattern, and it's deemed
12 not to be for a legitimate purpose and that
13 there's a risk of that drug being diverted, then
14 CVS would not report that to the DEA, right?
15 MS. MILLER: Object to form.
16 A. I'm not aware of any regulation that
17 would require us to report that to the DEA.
18 BY MR. ELSNER:
19 Q. And it was CVS's policy not to do it,
20 right?
21 MS. MILLER: Object to form.
22 A. I don't know if we had a policy, and I
23 don't recall a policy that says it is CVS's
24 policy not to do it. I don't recall there being

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1 a policy for that.
2 BY MR. ELSNER:
3 Q. It was CVS's practice not to report
4 those orders to the DEA, correct?
5 MS. MILLER: Object to form.
6 BY MR. ELSNER:
7 Q. And all that --
8 MS. MILLER: Mischaracterizing the
9 testimony, assuming he said that they determined
10 suspicious --
11 MR. ELSNER: You can object to form.
12 MS. MILLER: -- that they determined
13 that orders from outside vendors at some point
14 were determined to be --
15 MR. ELSNER: Your objection is noted.
16 BY MR. ELSNER:
17 Q. It was CVS's practice not to report
18 those orders to the DEA, correct?
19 MS. MILLER: Object to form.
20 A. So to clarify, we -- determining
21 whether an outside vendor order is suspicious is
22 not a practice or, as I'm aware, requirement for
23 CVS. I'm confident that CVS does meet all of
24 their reporting requirements when it comes to

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1 suspicious order monitoring.
2 BY MR. ELSNER:
3 Q. Does CVS report orders placed through
4 an outside vendor for a controlled substance
5 that CVS discovers is not for a legitimate
6 purpose, and does CVS report those orders to the
7 DEA?
8 MS. MILLER: Objection to form.
9 A. You're referring to outside orders
10 that are deemed suspicious, and that is not a
11 practice that I'm familiar with. But I am
12 confident that we meet all of our reporting
13 requirements. I have no reason to believe that
14 we do not.
15 BY MR. ELSNER:
16 Q. Does CVS report to the DEA orders from
17 outside vendors that CVS deems are not orders
18 for a legitimate purpose?
19 MS. MILLER: Object to form.
20 He hasn't testified any deeming of
21 outside vendor orders occurred, and asked and
22 answered.
23 A. I can say confidently that CVS is
24 complying with all of our responsibilities of

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1 reporting.
2 BY MR. ELSNER:
3 Q. That's not my question.
4 My question is, did CVS report orders
5 to the DEA -- was it CVS's practice to report
6 orders to the DEA if CVS determines that those
7 orders were not legitimate?
8 MS. MILLER: Object.
9 BY MR. ELSNER:
10 Q. Would it report it to the DEA?
11 MS. MILLER: Object to form. Asked
12 and answered.
13 A. Anything that would be above and
14 beyond what we were required to do would not be
15 something that I would decide. That probably
16 would be our legal counsel to make those calls.
17 BY MR. ELSNER:
18 Q. This is what you wrote -- this is
19 what's written in the PowerPoint presentation.
20 MS. MILLER: I just want to instruct
21 the witness not to testify in any way that would
22 reveal any attorney/client communications.
23 MR. ELSNER: You --
24 MS. MILLER: And, Mike, I think

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1 we've -- at this point, this is now, I think,
2 the tenth time you've asked him this question.
3 MR. ELSNER: I'm asking a different
4 question.
5 BY MR. ELSNER:
6 Q. Written in this PowerPoint
7 presentation here, I just want to make sure I've
8 got it correctly, is that orders that are placed
9 to an outside vendor that we identify as an
10 order deviating from the normal size, frequency,
11 and/or buying pattern and deemed to not be for
12 legitimate purposes or are at risk of being
13 diverted are not required to be reported to the
14 DEA at CVS. Is that what's written here?
15 MS. MILLER: Object to form.
16 A. I see that is what's written there. I
17 don't know if I'm the one who wrote that there,
18 and I'm not aware of the requirement that
19 requires CVS to report outside vendor orders.
20 BY MR. ELSNER:
21 Q. Okay. And then it says what we should
22 do is that "Pharmacy Operations must be alerted
23 that there is an order of interest that was
24 placed by the store so that remediation plans

<p style="text-align: right;">Page 266</p> <p>1 can be developed and implemented." Is that 2 what's written there? 3 MS. MILLER: Object to form. 4 A. I see that that is written there. 5 BY MR. ELSNER: 6 Q. And then it says "Until all the 7 remediations are implemented, the store will not 8 be allowed to order from our distribution 9 center." Is that what's written there? 10 MS. MILLER: Object to form. 11 A. I see that is written there. And as 12 you go through these bullets, this is not a 13 process that I'm familiar with currently at CVS. 14 BY MR. ELSNER: 15 Q. So CVS would alert pharmacy operations 16 of an order that's not for a legitimate purpose, 17 but would not report that order to the DEA if it 18 was through an outside vendor, right? 19 MS. MILLER: Object to form. 20 He hasn't testified that. He's 21 testified already that he doesn't even know that 22 this ever was in place. 23 BY MR. ELSNER: 24 Q. Am I right?</p>	<p style="text-align: right;">Page 268</p> <p>1 Q. Better to clean it up inside before 2 the DEA finds out, right? 3 MS. MILLER: Object to form. 4 BY MR. ELSNER: 5 Q. Right? 6 MS. MILLER: Object to form. 7 That's not at all what his testimony 8 is. 9 MR. ELSNER: Your objection is noted. 10 MS. MILLER: The implication of that 11 in that question is outrageous. 12 BY MR. ELSNER: 13 Q. Right? 14 MS. MILLER: Object to form. 15 A. I don't see anything here that speaks 16 to us trying to hide anything from the DEA. And 17 as I said, we meet our reporting -- I'm 18 confident we meet our reporting requirements. 19 And if we identify something within CVS, I am 20 also aware that we have policies, procedures, 21 processes to address that. But no, we would not 22 hide anything from the DEA. 23 BY MR. ELSNER: 24 Q. Well, you said it's better not to</p>
<p style="text-align: right;">Page 267</p> <p>1 MS. MILLER: Object to form. 2 A. This is not a policy I'm familiar with 3 so I can't speak to what would or would not have 4 been done or is done. 5 BY MR. ELSNER: 6 Q. Would you agree with me it would be 7 better to report it to the DEA so the DEA could 8 take action? 9 MS. MILLER: Object to form. 10 A. I'm confident we are complying with 11 our reporting requirements, and I know that at 12 CVS we have policies in place that deal with 13 situations if we think there's something such as 14 what you're reading on this slide. 15 BY MR. ELSNER: 16 Q. My question was, would you agree with 17 me it would be better to report it to the DEA? 18 MS. MILLER: Object to form. 19 A. No. 20 BY MR. ELSNER: 21 Q. You don't think it would be better? 22 MS. MILLER: Object to form. 23 A. No. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 269</p> <p>1 report it to the DEA, and this says what you're 2 going to do is you're going to inform pharmacy 3 ops so that they can create a remediation plan, 4 and internally at CVS we're not going to 5 distribute any more controlled substances to 6 that pharmacy until it's fixed, but it's not the 7 policy to inform the DEA, better to fix it 8 in-house before the DEA finds out, right? 9 MS. MILLER: Object to form. Asked 10 and answered. 11 I don't think we should be continuing 12 to go down this road. He has not even testified 13 that these -- that orders of outside vendors 14 were ever deemed to be suspicious. It's a 15 faulty premise and we've been spending too much 16 time on it. I think we should move on. 17 BY MR. ELSNER: 18 Q. Right? Yes or no? 19 MS. MILLER: Object to form. Object 20 to form. 21 BY MR. ELSNER: 22 Q. I'm entitled to an answer. Yes or no? 23 A. So there was a lot in that statement 24 or question, but CVS complies with our reporting</p>

<p style="text-align: right;">Page 270</p> <p>1 requirements, and certainly nothing that I 2 worked on or anyone that I know who works at CVS 3 has any intention of hiding anything from the 4 DEA. 5 Q. But it was CVS's policy or practice 6 not to report it to the DEA, right? 7 MS. MILLER: Object to form. 8 A. Again, I don't believe we have a 9 policy on this. And what we've been going over 10 I don't believe to be something that is relevant 11 or applicable to our current policies, 12 practices. 13 MR. ELSNER: Why don't we take a quick 14 break. I'll organize my documents. 15 THE VIDEOGRAPHER: We're going off the 16 record at 2:00 o'clock p.m. 17 (Whereupon, a recess was taken.) 18 THE VIDEOGRAPHER: We're back on the 19 record at 2:29 p.m. 20 BY MR. ELSNER: 21 Q. Mr. Schiavo, we took about a 25-minute 22 break from the deposition. Did you discuss the 23 content of the deposition with your counsel 24 during the break?</p>	<p style="text-align: right;">Page 272</p> <p>1 MR. ELSNER: You understand that he's 2 under oath? This is like trial. Any 3 conversations you have with him during a break 4 are admissible. 5 MS. MILLER: That's not -- that's 6 absolutely not true. 7 MR. ELSNER: That is absolutely not 8 true. 9 MS. MILLER: That is not true. We are 10 able to confer -- I'm able to confer with the 11 witness. 12 MR. ELSNER: In the middle of his 13 testimony concerning the content of his 14 testimony? 15 MS. MILLER: Yes. 16 MR. ELSNER: Is that what was done? 17 MS. MILLER: Wait, wait. 18 MR. MONTMINY: Not in our court you're 19 not. 20 MS. MILLER: No, wait, wait. Let 21 me -- 22 MR. MONTMINY: There are protocols in 23 this case. 24 MS. MILLER: The protocol --</p>
<p style="text-align: right;">Page 271</p> <p>1 MS. MILLER: Object to form. Instruct 2 him not to answer. He has attorney/client 3 privilege -- 4 MR. ELSNER: He is under oath and 5 testifying like he's at trial. 6 BY MR. ELSNER: 7 Q. Did you have a conversation with your 8 counsel, yes or no, about the content of the 9 deposition? 10 MS. MILLER: Objection. Instruct him 11 not to answer. 12 BY MR. ELSNER: 13 Q. Will you answer yes or no? It can't 14 reveal a privilege if you -- whether you had a 15 conversation or not. 16 MS. MILLER: You're asking him whether 17 he and I -- what we talked about. 18 MR. ELSNER: I asked him, did you 19 discuss with counsel, yes or no, the content of 20 your deposition. 21 MS. MILLER: I'm going to object and 22 instruct him not to answer. 23 MR. ELSNER: Even to yes or no? 24 MS. MILLER: Yes.</p>	<p style="text-align: right;">Page 273</p> <p>1 MR. ELSNER: I'd like to preserve the 2 record and have an answer of this, yes or no, 3 and a description of what was discussed. 4 MS. MILLER: No, I object. 5 MR. ELSNER: He can't even remember 6 tomorrow what color tie he wore today, so 7 there's no way that if this goes on that I'm not 8 going to get an answer to this question. 9 MS. MILLER: Well, I object on 10 attorney/client privilege grounds, and he's not 11 answering these questions. 12 MR. ELSNER: I think that's totally 13 inappropriate. 14 BY MR. ELSNER: 15 Q. Sir, if I can have you turn back to 16 the PowerPoint you were looking at that you 17 presented with Tom Bourque. Who was this 18 presentation made to? 19 A. I don't recall everyone we covered 20 this with. 21 But I did want to clarify on what we 22 had discussed before we left, that this 23 paragraph talking about outside vendor orders, I 24 was trying to distinguish between outside vendor</p>

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1 order information that is taken into account in
 2 reviewing a distribution center order, not
 3 suggesting that outside vendor orders are run
 4 through our SOM system, which they are not
 5 today. They haven't been, to the best of my
 6 recollection. So anything about reporting
 7 outside vendor suspicious orders would be a
 8 hypothetical situation and not something that I
 9 recall ever happening. So that would have been
 10 a hypothetical, anything that I answered under
 11 those circumstances.

12 Q. Is this a conversation you had with
 13 counsel during the break?

14 MS. MILLER: Objection. Instruct you
 15 not to answer. Objection on attorney/client
 16 privilege grounds.

17 BY MR. ELSNER:

18 Q. Are you going to follow your counsel's
 19 advice?

20 MS. MILLER: Objection. He's been
 21 instructed by his counsel not to answer. He's
 22 not going to answer the question.

23 BY MR. ELSNER:

24 Q. So if I understand it correctly, CVS

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1 does not have a system in place to monitor
 2 purchases of controlled substance by its
 3 pharmacies through a suspicious order monitoring
 4 system, is that your testimony?

5 MS. MILLER: Objection to form.

6 A. CVS does not run outside vendor orders
 7 through our suspicious order monitoring system.

8 BY MR. ELSNER:

9 Q. Okay. And that would include for
 10 controlled substances and Schedule II drugs like
 11 OxyContin, correct?

12 MS. MILLER: Objection to form.

13 A. Currently today, and I don't recall a
 14 time where we ever ran any outside vendor orders
 15 through our suspicious order monitoring system.

16 BY MR. ELSNER:

17 Q. In Page 4 of the PowerPoint
 18 presentation -- well, strike that. Before we --
 19 I think I had a question, and I don't know that
 20 I got an answer to it. I think you diverted to
 21 something else.

22 But who did you prepare this
 23 presentation for, and who was it given to?

24 MS. MILLER: Object to form.

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1 A. So I know it indicates I'd given
 2 feedback or input on this presentation. I don't
 3 remember that I put it together, and I don't
 4 recall everyone that we presented this to.

5 BY MR. ELSNER:

6 Q. Well, the cover of the e-mail to the
 7 presentation says "Craig, This is good," this is
 8 the -- talking about the SOM presentation that
 9 you sent him your revisions to, right? Tom,
 10 your boss, writes "Craig, This is good. I added
 11 our department organizational chart to the
 12 front. I will speak to it, as well as the roles
 13 and responsibilities of our team, and how each
 14 department works together...then I'll turn it
 15 over to you" -- you, Craig Schiavo -- "to you to
 16 finish, and after the deck, then I'll go through
 17 the Archer SOM system highlights."

18 So, in fact, it was the intention that
 19 you were going to participate in this
 20 presentation and give the presentation with Tom
 21 Bourque, correct?

22 MS. MILLER: Object to form.

23 A. Reading this e-mail, it looks like I
 24 was going to take part.

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1 BY MR. ELSNER:

2 Q. Okay. And in the first page of the
 3 PowerPoint presentation, both you and Tom are
 4 listed under the title, correct?

5 A. Both of our names are there.

6 Q. Okay. If you go to Page 4 of the
 7 PowerPoint presentation, it says "Penalties
 8 Levied by the DEA."

9 Do you see that?

10 A. I do see that.

11 Q. Did you collect information about the
 12 DEA's investigations and penalties leveled by
 13 the DEA against other distributors and
 14 pharmacies?

15 A. At a high level it looks like there
 16 are situations documented here.

17 Q. Okay. And you included in the
 18 presentation a penalty levied by the DEA on
 19 Cardinal Health in February of 2012, is that
 20 right? Go to the first bullet under Cardinal
 21 Health.

22 A. I see that.

23 Q. Okay. And it reads, and if it's
 24 easier for you to read on the screen next to you

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1 where it's blown up, "DEA Registration is
 2 suspended for two years in Florida distribution
 3 center because of sales of oxycodone to
 4 pharmacies in Florida," and then in parenthesis
 5 it says "2 CVS's."
 6 Do you see that?
 7 A. I do see that.
 8 Q. Okay. You were aware, were you not,
 9 that the DEA investigated Cardinal Health and
 10 suspended their license with respect to their
 11 distribution of controlled substances to two CVS
 12 stores in Florida?
 13 MR. DAWSON: Object to the form.
 14 A. I see what it says here. I don't
 15 recall exactly the circumstances or all the
 16 circumstances that led to Cardinal Health having
 17 their registration suspended, or am I even
 18 positive that it was actually suspended.
 19 BY MR. ELSNER:
 20 Q. Okay. Exhibit 17.
 21 (Whereupon, CVS-Schiavo-17 was marked
 22 for identification.)
 23 BY MR. ELSNER:
 24 Q. This is the Government's Prehearing

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1 Statement in the matter of Cardinal Health dated
 2 February 22, 2012. And I'm going to ask you to
 3 turn to Page 17 of the document. Let me ask you
 4 to look at the second to last paragraph on the
 5 page. It says "CVS 219 and 5195, two of
 6 Respondent's" -- and I'll let you know that
 7 means Cardinal's -- "top four retail pharmacy
 8 customers, are located in Sanford, Florida."
 9 And then it reads -- if you look in
 10 the last paragraph on the page, it starts "In
 11 2011, Respondent" -- that's Cardinal --
 12 "collectively distributed over 3 million dosage
 13 units of oxycodone to six Sanford, Florida
 14 pharmacies. Of this volume, Respondent shipped
 15 over 3 million dosage units (96 percent) to the
 16 two CVS stores named in the ISO. This volume
 17 dwarfs the oxycodone volume purchased by other
 18 chain pharmacies in Sanford." And then it goes
 19 on to explain the dosage.
 20 Were you aware that two CVS Pharmacy
 21 stores had received over 3 million dosage units
 22 of oxycodone in 2011?
 23 MR. DAWSON: Objection.
 24 MS. MILLER: Object to form.

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1 A. This is my first time seeing this
 2 document, and these numbers are not something I
 3 am or was aware of.
 4 BY MR. ELSNER:
 5 Q. In the second to last paragraph, it
 6 reads "According to the 2010 US Census Bureau
 7 Facts Sheet, Sanford, Florida has a population
 8 of 53,570 people." Did I read that correctly?
 9 A. That's what it says.
 10 Q. Okay. And then it says "Based on
 11 these numbers, Respondent's distribution of
 12 oxycodone could supply every resident of
 13 Sanford, Florida with approximately 58.6 dosage
 14 units of oxycodone."
 15 Did I read that correctly?
 16 A. That is what this says.
 17 Q. Would you agree with me that the size
 18 of the community in which a pharmacy is based
 19 should be one of the factors that one should
 20 look at in terms of due diligence for suspicious
 21 order monitoring or due diligence of reviews of
 22 sales for controlled substances to determine
 23 whether the amount of opioids or controlled
 24 substances being shipped to that pharmacy is

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1 proportional with the community in which it
 2 lives?
 3 MS. MILLER: Object to form.
 4 A. I wouldn't necessarily say that is
 5 something that you have to include.
 6 BY MR. ELSNER:
 7 Q. I didn't say you had to. I said,
 8 would you agree with me that that's a factor?
 9 MS. MILLER: Object to form.
 10 A. I don't believe that is a factor that
 11 you have to include.
 12 BY MR. ELSNER:
 13 Q. Do you believe it's a factor that you
 14 should include?
 15 MS. MILLER: Object to form.
 16 A. I don't think it's something that is
 17 necessary to be included.
 18 BY MR. ELSNER:
 19 Q. Do you think it's important to
 20 include?
 21 MS. MILLER: Object to form.
 22 BY MR. ELSNER:
 23 Q. How important or unimportant is it?
 24 MS. MILLER: Object to form.

<p style="text-align: right;">Page 282</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Scale of 1 to 10, 1 being totally not</p> <p>3 important at all, 10 essential.</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. I don't know if I can put a number on</p> <p>6 how important that is to include. There's lots</p> <p>7 of factors that are included in reviewing or</p> <p>8 conducting due diligence.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. I'm sure there are, but do your best.</p> <p>11 MS. MILLER: Object to form.</p> <p>12 A. We're not talking about any specific</p> <p>13 order situation that -- I don't know. I don't</p> <p>14 know if it would be important or not. I can't</p> <p>15 say.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Okay. You can't say whether the size</p> <p>18 of the community in which the pharmacy sits</p> <p>19 would be an important factor in looking at the</p> <p>20 volume of oxycodone products or other opioids</p> <p>21 shipped into the pharmacy in that community?</p> <p>22 You wouldn't think -- you can't say whether</p> <p>23 that's important or not?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 284</p> <p>1 MR. DAWSON: Objection.</p> <p>2 A. This is before I was even in the --</p> <p>3 with the company. I --</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. I said after this. At any point after</p> <p>6 this, after the DEA suspended Cardinal's</p> <p>7 license, did CVS create a system like that,</p> <p>8 after February, 2012?</p> <p>9 MR. DAWSON: Objection.</p> <p>10 MS. MILLER: Object to form.</p> <p>11 A. I don't recall if that is part. I</p> <p>12 don't recall if that's an element of the system.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. Okay. Don't recall if it's an element</p> <p>15 of the system, and you can't give it a score</p> <p>16 from 1 to 10 in terms of importance, is that</p> <p>17 right?</p> <p>18 MS. MILLER: Object to form.</p> <p>19 A. I wouldn't be able to assign it a</p> <p>20 score if it's important or not important.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Okay. The next thing that the</p> <p>23 government discusses in the brief on Page 18, if</p> <p>24 you flip the page, about in the middle of the</p>
<p style="text-align: right;">Page 283</p> <p>1 A. I can't say that there aren't other</p> <p>2 elements that would be just as important or not</p> <p>3 important or couldn't get you to the same</p> <p>4 information that you needed.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Did CVS track that information?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 A. This is before I even started at CVS.</p> <p>9 I have no idea.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. In 2012 when you joined CVS, was it</p> <p>12 looking at this information?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. I'm not sure at that time all of the</p> <p>15 elements that were looked at as part of the SOM.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. After Cardinal's license was suspended</p> <p>18 by the DEA and this investigation was going on,</p> <p>19 after that did CVS have a policy to look at the</p> <p>20 size of the community in which its pharmacies</p> <p>21 were sitting to determine whether the orders to</p> <p>22 that pharmacy were proportional to the community</p> <p>23 in which that pharmacy was situated?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 285</p> <p>1 page there's a line there that begins "Publix</p> <p>2 Pharmacy 641." Do you see that? Do you see</p> <p>3 that paragraph?</p> <p>4 A. I see the paragraph starting with</p> <p>5 Publix Pharmacy.</p> <p>6 Q. Okay. And then the next sentence</p> <p>7 reads "In 2011, CVS 5195 purchased 1.2 million</p> <p>8 dosage units of oxycodone, while Publix Pharmacy</p> <p>9 0641 purchased only 25,700 units of oxycodone.</p> <p>10 The two stores are located within two miles of</p> <p>11 one another."</p> <p>12 Do you think it's important to have a</p> <p>13 system that tracks sales of controlled</p> <p>14 substances like opioids in comparison with other</p> <p>15 pharmacies in the same geographic area?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. I don't think that information is</p> <p>18 necessary to have an effective system.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. In terms of scale 1 to 10, 1 being</p> <p>21 totally useless, 10 being essential, where would</p> <p>22 you place the relationship between a pharmacy's</p> <p>23 sales of controlled substances compared to other</p> <p>24 pharmacies in the same geographic area?</p>

<p style="text-align: right;">Page 286</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. Based on the limited information I</p> <p>3 have to answer that question, I couldn't even</p> <p>4 think about how to assign that a score.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. So you can't assign a score for the</p> <p>7 importance of geographic area. Can you tell us</p> <p>8 whether CVS had a policy in place to look at the</p> <p>9 geographic area in which a store sat and compare</p> <p>10 the sales of controlled substances to other like</p> <p>11 pharmacies in the same geographic area?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. During this time frame I did not work</p> <p>14 for CVS, and I can't answer that, I don't know.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. I'm talking about at any time, today,</p> <p>17 yesterday, all the way back to 2012.</p> <p>18 A. I'm not familiar with the process of</p> <p>19 how CVS monitors, sells, and incorporates other</p> <p>20 factors of where those sales are taking place.</p> <p>21 I'm not familiar with those.</p> <p>22 Q. What about the distribution of</p> <p>23 controlled substances, would it be important as</p> <p>24 part of a due diligence system to look at where</p>	<p style="text-align: right;">Page 288</p> <p>1 A. I personally never reviewed suspicious</p> <p>2 orders or orders of interest or any orders.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. Well, you managed people who did that,</p> <p>5 right? In 2014 you managed the people who did</p> <p>6 that process, right?</p> <p>7 A. I never had anyone on the suspicious</p> <p>8 order monitoring team in 2014 that reported to</p> <p>9 me.</p> <p>10 MR. ELSNER: We'll mark this as the</p> <p>11 next exhibit.</p> <p>12 (Whereupon, CVS-Schiavo-18 was marked</p> <p>13 for identification.)</p> <p>14 BY MR. ELSNER:</p> <p>15 Q. This is Schiavo Exhibit 18. If you --</p> <p>16 this is another one of your year-end reviews.</p> <p>17 This one is dated the first of -- I'm sorry,</p> <p>18 January 22, 2015. This is your year-end review</p> <p>19 for 2014.</p> <p>20 I'm going to ask you to take a look at</p> <p>21 Page 2. Top of the page it reads "I continue to</p> <p>22 be an active contributor to the SOM team. My</p> <p>23 main responsibilities as it relates to this team</p> <p>24 are as follows."</p>
<p style="text-align: right;">Page 287</p> <p>1 a particular store is sitting and compare the</p> <p>2 distribution of opioids to that store in</p> <p>3 comparison with other stores in the same</p> <p>4 geographic area? Yes or no.</p> <p>5 MS. MILLER: Object to form.</p> <p>6 A. Again, there's no information to go on</p> <p>7 that I can assign a score to something or rate</p> <p>8 its importance of one data element.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. Okay. Did CVS have a system ever to</p> <p>11 look at the -- where a store sits in a community</p> <p>12 and compare the purchases of that store for</p> <p>13 controlled substances to other like stores in</p> <p>14 the same geographic area?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. I'm not saying that they don't, but I</p> <p>17 don't know what that process would be. I don't</p> <p>18 know.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Was that ever part of the due</p> <p>21 diligence follow-up process that you were aware</p> <p>22 of in terms of reviewing potentially suspicious</p> <p>23 orders for hydrocodone?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 289</p> <p>1 Number 1, "I acted as the team's</p> <p>2 manager for part of 2014 until Susan was brought</p> <p>3 on to manage the team."</p> <p>4 Does that refresh your recollection</p> <p>5 that you were the team manager for the SOM</p> <p>6 program in 2014?</p> <p>7 A. I think that's really poorly worded.</p> <p>8 At no point did the SOM team ever report to me</p> <p>9 that I recall.</p> <p>10 Q. That's what you wrote, though, in your</p> <p>11 annual review?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I don't specifically remember writing</p> <p>14 that, but this seems to be my year-end review in</p> <p>15 2014.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. Okay. So we're on Exhibit 18?</p> <p>18 A. 18.</p> <p>19 MS. MILLER: Is this 18? Okay.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. We're on Exhibit 18, and I've shown</p> <p>22 you documents from 2012 through 2014, many of</p> <p>23 which you wrote. Is it true that you don't have</p> <p>24 any memory of any of the documents I've shown</p>

<p style="text-align: right;">Page 290</p> <p>1 you today?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. I don't recall specifically writing</p> <p>4 these words that are on the page. I see them</p> <p>5 written there. I don't have any reason to</p> <p>6 believe that I didn't, if that's what it's</p> <p>7 indicating, but I do not recall writing these</p> <p>8 documents.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. Okay. I just want to make sure that I</p> <p>11 haven't missed one.</p> <p>12 Out of all the documents I've shown</p> <p>13 you that you've authored, you haven't remembered</p> <p>14 writing any of them, right?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. I don't recall a document that we've</p> <p>17 reviewed today that I recall actually sitting</p> <p>18 there and drafting the document.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. I just asked if you remembered it. I</p> <p>21 didn't ask if you remember the day you sat there</p> <p>22 and where you were and how you wrote it. I just</p> <p>23 asked if you remember the document. Do you</p> <p>24 remember any of them?</p>	<p style="text-align: right;">Page 292</p> <p>1 A. I don't know what Susan's position was</p> <p>2 when she was originally hired at CVS.</p> <p>3 Q. Do you remember that she was</p> <p>4 responsible for managing the SOM program?</p> <p>5 A. I remember at some point Susan was</p> <p>6 hired as the manager of the SOM program.</p> <p>7 Q. And you worked to get her up to speed</p> <p>8 on the program, right?</p> <p>9 MS. MILLER: Object to form.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Is that what you wrote?</p> <p>12 A. That's what it says. I did work with</p> <p>13 Susan once she was hired.</p> <p>14 Q. Okay. And then it says that you</p> <p>15 "Assisted with the rollout of the SOM system to</p> <p>16 all CVS Distribution Centers." Did I read that</p> <p>17 right?</p> <p>18 A. Looks like --</p> <p>19 Q. Second bullet.</p> <p>20 A. Looks like you read that correctly.</p> <p>21 Q. Okay. Is that true? Did you do that?</p> <p>22 A. At some level I assisted with the</p> <p>23 process, I participated in the process.</p> <p>24 Q. Okay. And that you were "part of the</p>
<p style="text-align: right;">Page 291</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. I don't recall seeing a document today</p> <p>3 that I recall drafting or remembering everything</p> <p>4 that was in those documents.</p> <p>5 BY MR. ELSNER:</p> <p>6 Q. Okay. If you go down on the bullets</p> <p>7 on the same Page 2 of 7, it then says "Once</p> <p>8 Susan was hired, I worked to get her up to speed</p> <p>9 on the program and expectations/requirements."</p> <p>10 Did I read that correctly? If it's easier to</p> <p>11 read, you can see it on the screen blown up.</p> <p>12 A. Where was that last piece?</p> <p>13 Q. When Susan was hired --</p> <p>14 MR. ELSNER: Gina, back up at the top.</p> <p>15 Q. "Once Susan was hired," second</p> <p>16 sentence, first bullet.</p> <p>17 A. Okay.</p> <p>18 Q. Did I read that right?</p> <p>19 A. It appears that you did.</p> <p>20 Q. Who is Susan?</p> <p>21 A. That would be Susan Delmonico, I</p> <p>22 believe.</p> <p>23 Q. What was her position at CVS when she</p> <p>24 was hired?</p>	<p style="text-align: right;">Page 293</p> <p>1 interviewing process for all new hires," I</p> <p>2 assume you were meaning related to the SOM</p> <p>3 system. Did you do that?</p> <p>4 A. I participated in the interview</p> <p>5 process of, what I can remember, the SOM team</p> <p>6 members that were hired.</p> <p>7 Q. Okay. And next bullet, you provided</p> <p>8 "continuous training to the team as needed and</p> <p>9 provided ongoing support to both the Management</p> <p>10 team as well as the SOM analysts." Did I read</p> <p>11 that correctly?</p> <p>12 A. It looks like that's what it says.</p> <p>13 Q. And then it says you participated in</p> <p>14 weekly meetings where we reviewed the SOM cases</p> <p>15 and we talked through the due diligence</p> <p>16 process." Did you write that?</p> <p>17 A. That's what it says, but I don't</p> <p>18 remember how long I did that for.</p> <p>19 Q. Then it says "The SOM team has me</p> <p>20 review all identified 'Suspicious Orders' before</p> <p>21 the block is removed and controlled substances</p> <p>22 are shipped to the store."</p> <p>23 Did I read that correctly?</p> <p>24 A. That's what it says.</p>

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1 Q. Okay. So if we go back to my
2 question, I was asking you whether one of the
3 factors that the SOM analysts would look at when
4 doing a due diligence review was the shipments
5 of controlled substances to a pharmacy and how
6 those shipments compared with other pharmacies
7 in the same geographic area. Did they evaluate
8 that?

9 MS. MILLER: Object to form.

10 A. Again, I don't recall if that was part
11 of the review process.

12 BY MR. ELSNER:

13 Q. Okay. If you go to Page 25 --
14 MS. MILLER: 17, Exhibit 17?
15 MR. ELSNER: Yes, back to 17.

16 BY MR. ELSNER:

17 Q. There's a heading there that says "CVS
18 219." Do you see that? This is Page 25 of the
19 brief.

20 A. I see CVS 219 underlined.

21 Q. Yes. Okay. And they're talking about
22 the testimony that's going to potentially be
23 given by GS Carter. And then in the second
24 sentence it reads "According to an analysis

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1 conducted by GS Carter, between January 1, 2010
2 and October 18, 2011, 42 percent of the
3 30-milligram oxycodone prescriptions at CVS 219
4 were paid for in cash, using no insurance to pay
5 for the medication." Did I read that correctly?

6 A. That appears to be what it says.

7 Q. Were you aware that that was taking
8 place at the CVS Pharmacy 219 as part of the
9 DEA's investigation into Cardinal Health that
10 you described in your PowerPoint?

11 MS. MILLER: Object to form.

12 A. This is my first time seeing the
13 document. I wasn't at CVS at this time. I
14 don't -- these details are not something that
15 are familiar to me.

16 BY MR. ELSNER:

17 Q. Would you agree with me that paying
18 for prescriptions of controlled substances in
19 cash is one of the red flags for diversion?

20 MS. MILLER: Object to form.

21 A. It could potentially be a red flag. I
22 don't know specifically for diversion.

23 BY MR. ELSNER:

24 Q. Red flag for what?

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1 A. Could be a red flag for many things.

2 Q. Under the suspicious order monitoring
3 system and the due diligence review conducted by
4 the SOM analysts, was it one of the elements
5 they were looking at, whether there were
6 purchases of controlled substances from
7 pharmacies paid for in cash?

8 A. Again, I wasn't at CVS at this time.
9 I don't know exactly what they were looking at
10 during due diligence.

11 Q. Well, when you were overseeing the SOM
12 analysts, were they -- was that one of the
13 factors that they were taking into the account,
14 whether prescriptions were being paid for in
15 cash?

16 MS. MILLER: Object to form.

17 A. I believe that is one of the data
18 elements that's available to the analysts today.

19 BY MR. ELSNER:

20 Q. How important is that element, 1 to
21 10, 1 being totally useless, 10 being essential?

22 MS. MILLER: Object to form.

23 A. Again, like the previous times you've
24 asked me to put a number or rating on something,

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1 without, I think, a lot more specifics I'm not
2 comfortable -- I can't guess at what rating it
3 would be.

4 BY MR. ELSNER:

5 Q. Well, if we turn back to Exhibit 17 on
6 Page 25, the percentage there was 42 percent of
7 the 30-milligram oxycodone prescriptions at CVS
8 219 were paid for in cash using no insurance.
9 And if you go further down to the very end of
10 that paragraph the government wrote that "Data
11 from the IMS Institute for Healthcare
12 Informatics indicates that approximately
13 6.9 percent of prescriptions were paid for in
14 cash in 2010."

15 Would it be important as part of the
16 due diligence process to know that if the
17 average for prescription payments in cash was
18 6.9 percent, and there was a CVS Pharmacy that
19 was selling prescriptions for controlled
20 substances and 42 percent of them were being
21 paid for in cash, would that cause you to
22 believe that it's a potentially suspicious order
23 and that it should be investigated?

24 MS. MILLER: Object to form.

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1 A. That one data element, knowing nothing
2 else about where this store is located or other
3 information that the analyst is looking at, I
4 can't say that would cause me concern. I don't
5 know enough about the situation.
6 BY MR. ELSNER:
7 Q. What else would you want to know?
8 What else were your analysts calling to find out
9 in 2014 when they were doing this work?
10 MS. MILLER: Object to form.
11 A. I was not part of the day-to-day
12 process. The analysts made a determination of
13 what they thought was important to look at
14 and --
15 BY MR. ELSNER:
16 Q. No suspicious orders would be cleared
17 without your approval --
18 MS. MILLER: Object to form.
19 BY MR. ELSNER:
20 Q. -- so what did you look at to
21 determine whether they should be approved or
22 not?
23 MS. MILLER: Object to form.
24 BY MR. ELSNER:

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1 Q. What were the data points?
2 A. I don't recall my role ever being
3 reviewing every single thing, looking at every
4 single thing that an analyst did on every single
5 suspicious order. I would look at what actions
6 were taken to address whatever concern the
7 analysts had and feel comfortable that the --
8 whatever the concern was was addressed. That
9 was my role in providing feedback as to whether
10 or not I felt an order should be released, or
11 should resume.
12 Q. You had weekly meetings with the SOM
13 analyst team to go over potentially suspicious
14 orders, and I want to know, what were they doing
15 when they were doing a deep dive to determine
16 whether an order was suspicious or not? What
17 were they looking at?
18 MS. MILLER: Object to form.
19 A. Every situation is different.
20 BY MR. ELSNER:
21 Q. Tell me what the factors were.
22 MS. MILLER: Object to form.
23 A. Man, there are hundreds and hundreds
24 of factors that they can consider. Every

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1 situation is different, every situation might
2 require that they look at different -- well, not
3 require, but if they feel like they might look
4 at different factors. I can't sit here and tell
5 you when an order flags what exactly they should
6 do. I wasn't part of that process, and that's
7 up to their determination.
8 BY MR. ELSNER:
9 Q. But you managed that program in 2014,
10 right?
11 MS. MILLER: Object to form.
12 BY MR. ELSNER:
13 Q. That's what you wrote, right?
14 A. I know what that says, but I was not
15 the manager of anyone on that team.
16 Q. Who was?
17 A. I don't recall who they reported to.
18 Q. They reported to you, right? You
19 hired that team, they reported to you until
20 Susan was hired, right?
21 MS. MILLER: Object to form.
22 A. My role is not to hire the team. I
23 participated in the interviews.
24 BY MR. ELSNER:

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1 Q. You managed them until Susan was
2 hired, right?
3 MS. MILLER: Object to form.
4 A. I mean, that's what it says. Nobody
5 on that team ever reported to me. I provided
6 guidance and support.
7 BY MR. ELSNER:
8 Q. You provided continuous training to
9 the team, right?
10 A. At the time I wrote that, I don't know
11 what I meant by training, but I did continue to
12 support the team as needed.
13 Q. Okay. So I need you to tell me, what
14 are, like, the top ten criteria that they would
15 be looking at when they were doing a deep dive
16 on a store?
17 MS. MILLER: Object to form.
18 A. I can't say. Every order is
19 different. There is no top ten that I can think
20 of. It's --
21 BY MR. ELSNER:
22 Q. Give me some factors. Give me some
23 elements that they were asked to look for. You
24 had to tell them to look for something, so what

<p style="text-align: right;">Page 302</p> <p>1 did you tell them to do?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. There was information available for</p> <p>4 them to look at, depending on a wide flag and</p> <p>5 the information they were looking at. There was</p> <p>6 no one way where I said this has to be done. I</p> <p>7 don't know of any official rule book on what has</p> <p>8 to be done.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. Okay. So there are no -- there's no</p> <p>11 set minimum standard of what they had to look at</p> <p>12 before they decided an order was clear, is that</p> <p>13 right?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. It's up to the analyst to decide</p> <p>16 what's the appropriate level of review in order</p> <p>17 to feel comfortable with releasing an order.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. And there was no official rule book on</p> <p>20 what was to be done at CVS regarding the</p> <p>21 analyst's review of suspicious orders, correct?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. So in 2014 I know we had policies</p> <p>24 around SOM, and then, as I understand, policies</p>	<p style="text-align: right;">Page 304</p> <p>1 DEA from our distribution centers? Did you ever</p> <p>2 do that?</p> <p>3 MS. MILLER: Object to form.</p> <p>4 A. I don't ever recall requesting</p> <p>5 information on recorded orders.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. Did you know that in February of 2012</p> <p>8 there had only been -- that there was a</p> <p>9 suspicious order reported in February of 2012</p> <p>10 but none others at CVS from its distribution</p> <p>11 practices to the DEA?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I wasn't with the company in that</p> <p>14 time.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Well, when you joined in August of</p> <p>17 2012, there had only been one suspicious order</p> <p>18 reported to the DEA ever from CVS related to its</p> <p>19 distribution practices from controlled</p> <p>20 substances. Were you aware of that?</p> <p>21 MS. MILLER: Object to form.</p> <p>22 A. I don't know if that is true.</p> <p>23 BY MR. ELSNER:</p> <p>24 Q. Would that concern you?</p>
<p style="text-align: right;">Page 303</p> <p>1 and the SOM policy. It gives high-level</p> <p>2 guidelines on what the team should follow, but I</p> <p>3 don't recall it specifically calling out the</p> <p>4 exact steps that need to be taken on every</p> <p>5 single order that is flagged as an order of</p> <p>6 interest as they're all different and all</p> <p>7 require a different even level of attention or</p> <p>8 due diligence.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. When you started at -- let me see. Do</p> <p>11 you agree with me that -- strike that.</p> <p>12 When you started at CVS, did you</p> <p>13 investigate whether any suspicious orders had</p> <p>14 been reported to the DEA regarding the</p> <p>15 distribution of any controlled substances?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. I don't recall ever looking into</p> <p>18 suspicious orders that were reported.</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. Well, you were sort of looking at the</p> <p>21 old system, developing an enhanced or new</p> <p>22 system, did you ever make any assessment or</p> <p>23 determine whether -- you know, how are we doing,</p> <p>24 have we ever reported a suspicious order to the</p>	<p style="text-align: right;">Page 305</p> <p>1 MS. MILLER: Object to form.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. That CVS had only reported one</p> <p>4 suspicious order from its distribution centers</p> <p>5 related to controlled substances?</p> <p>6 MS. MILLER: Object to form.</p> <p>7 A. Would that have concerned me when I</p> <p>8 started at CVS, having -- knowing nothing</p> <p>9 about -- not knowing much about the company and</p> <p>10 the processes, policies, but I wouldn't -- I</p> <p>11 don't think it would concern me. I wouldn't</p> <p>12 know enough for it to be concerning.</p> <p>13 BY MR. ELSNER:</p> <p>14 Q. Well, I mean, you're in the position</p> <p>15 that you are now, and you're familiar with the</p> <p>16 Rannazzisi letter all the way back to 2007,</p> <p>17 December of 2007. You worked in compliance for</p> <p>18 Henry Schein for years. You then move over to</p> <p>19 CVS. Now you've been working at CVS for a very</p> <p>20 long time. Looking back on that whole history,</p> <p>21 does it concern you that CVS had only reported a</p> <p>22 single order to the DEA through February of 2012</p> <p>23 related to a suspicious order for a controlled</p> <p>24 substance?</p>

<p style="text-align: right;">Page 306</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. Again, at the time I was hired I don't</p> <p>3 think I knew enough to say whether or not it</p> <p>4 would or would not be concerning. But I don't</p> <p>5 think it's fair to compare Henry Schein to CVS,</p> <p>6 that's apples and oranges between business</p> <p>7 models.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Well, I'm asking you today. You're</p> <p>10 the -- the position that you hold at CVS today,</p> <p>11 holding that position with your years of</p> <p>12 experience, do you find it concerning that at</p> <p>13 the time when you started at the company in</p> <p>14 August of 2012 that CVS had only reported a</p> <p>15 single order to the DEA related to its</p> <p>16 distribution of controlled substances?</p> <p>17 MS. MILLER: Object to form.</p> <p>18 A. Sitting here today, knowing what I</p> <p>19 know, no, I don't think that would be</p> <p>20 concerning. Knowing all of the policies and</p> <p>21 processes and programs and the field alignment</p> <p>22 and how LP, loss prevention, is involved, no,</p> <p>23 that wouldn't be concerning. I wouldn't expect</p> <p>24 that there would be a lot of controlled</p>	<p style="text-align: right;">Page 308</p> <p>1 made some updates to the SOM Solutions based on</p> <p>2 our conversation. Should I send this to</p> <p>3 everyone in the meeting tomorrow?</p> <p>4 "I will bring handouts as well, but I</p> <p>5 know some people won't be able to make it.</p> <p>6 Thanks, Craig."</p> <p>7 Did I read that correctly?</p> <p>8 A. That's what it says.</p> <p>9 Q. Okay. What does SOM end state</p> <p>10 enhancement solution mean?</p> <p>11 A. I'm not sure. This is in October of</p> <p>12 2012 -- November of 2012, I was with the company</p> <p>13 for about three months at this time, and I know</p> <p>14 at this time I don't think there's any way that</p> <p>15 I could have known what the end state solution</p> <p>16 could be, so I'm not sure what that's referring</p> <p>17 to.</p> <p>18 Q. We talked earlier about the Buzzeo</p> <p>19 Group. You did a presentation for them while</p> <p>20 you were working at Henry Schein, is that right?</p> <p>21 MR. MONTMINY: Objection. Form.</p> <p>22 A. While I was working at Henry Schein, I</p> <p>23 did speak at one of their conferences.</p> <p>24 BY MR. ELSNER:</p>
<p style="text-align: right;">Page 307</p> <p>1 substance suspicious orders.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. Do you know what the system was in</p> <p>4 2012 when you started at CVS?</p> <p>5 MS. MILLER: Object to form.</p> <p>6 A. I don't recall the specifics of the</p> <p>7 system.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. So you don't know whether it was a</p> <p>10 robust system or not a robust system in 2012</p> <p>11 when you joined CVS, right?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I don't know the specifics of the</p> <p>14 system, but I don't ever recall having any</p> <p>15 concerns throughout my time at CVS that we</p> <p>16 didn't have an effective system.</p> <p>17 MR. ELSNER: Okay. This is</p> <p>18 Exhibit 19.</p> <p>19 (Whereupon, CVS-Schiavo-19 was marked</p> <p>20 for identification.)</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. This is another e-mail from you to Tom</p> <p>23 Bourque dated 11/26/12, subject is the "SOM</p> <p>24 System End State Solution." You write "Tom, I</p>	<p style="text-align: right;">Page 309</p> <p>1 Q. And Buzzeo was one of the consultants</p> <p>2 that Henry Schein had hired, and you had worked</p> <p>3 with them in the past, correct?</p> <p>4 MR. MONTMINY: Objection. Form.</p> <p>5 A. I knew Buzzeo from Henry Schein and</p> <p>6 work we had done.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Okay. And you knew that, when you</p> <p>9 joined CVS, that Buzzeo was one of the</p> <p>10 consultants that was working with CVS on its</p> <p>11 suspicious order monitoring system, correct?</p> <p>12 MS. MILLER: Object to form.</p> <p>13 A. I don't recall when I became aware</p> <p>14 that CVS and Buzzeo had any relationship.</p> <p>15 MR. ELSNER: I'm going to mark this as</p> <p>16 the next exhibit.</p> <p>17 (Whereupon, CVS-Schiavo-20 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. ELSNER:</p> <p>20 Q. This is MR 82.</p> <p>21 A. Thank you.</p> <p>22 Q. This is a letter that was addressed to</p> <p>23 you on the second page as the manager of</p> <p>24 regulatory compliance and also to your boss, the</p>

<p style="text-align: right;">Page 310</p> <p>1 director of regulatory compliance, Tom Bourque, 2 correct? 3 A. That's what it appears to be. 4 Q. Okay. Dated December 19, 2012? 5 A. That's what it says. 6 Q. Okay. And the subject is the "SOM 7 Model Services Proposal," right? 8 A. "CVS_BuzzeoPDMA_SOM Model Services 9 Proposal." 10 Q. And you had a meeting with them to 11 discuss the proposal, is that right? 12 A. I don't recall this proposal ever 13 being discussed. 14 Q. All right. It says in the first line 15 "Dear Tom and Craig, As a follow-up to our 16 meeting last week, I am pleased to provide you 17 with our proposal that outlines our SOM Model 18 support services." 19 Did I read that right? 20 A. "Please find our proposal to support 21 your new SOM initiatives" is what it says. 22 Oh, you're on the document. I'm 23 sorry, I'm still on the e-mail. 24 Q. I'm talking about the letter to you,</p>	<p style="text-align: right;">Page 312</p> <p>1 "Number 1. Combining all Controlled 2 Substances (CII through CV) and Listed Chemicals 3 into one SOM model." That's one of the 4 enhancements they were going to make to the SOM 5 program, right? 6 MS. MILLER: Object to form. 7 A. That seems to be in their proposal 8 that they provided to us. 9 BY MR. ELSNER: 10 Q. That indicates there wasn't one in 11 existence, right, that they were going to create 12 this as an enhancement to the current SOM 13 system, right? 14 MS. MILLER: Object to form. 15 A. I see it says there -- I can't confirm 16 and I don't recall that that was not part of the 17 system. 18 BY MR. ELSNER: 19 Q. They were providing a proposal for 20 something which they call as a new enhancement 21 that you already had, is that your testimony? 22 MS. MILLER: Object to form. 23 A. I see it says it there, but I don't 24 recall if that was -- I'm not sure what that's</p>
<p style="text-align: right;">Page 311</p> <p>1 which is the second page of the document 111914, 2 "Dear Tom and Craig, As a follow-up to our 3 meeting last week, I am pleased to provide you 4 with our proposal that outlines our SOM Model 5 support services that will assist in meeting 6 your regulatory and operational requirements." 7 Did I read that correctly? 8 A. That's what it says. 9 Q. And this is a company that was 10 formerly the Buzzeo Group, is that right? 11 A. Yes. 12 Q. Okay. If you turn to the second page 13 of the letter, it lists under "Project 1: SOM 14 Statistical Model Development." 15 Do you see that? 16 A. Where is -- 17 Q. There's a heading on the top of that 18 page. 19 Do you see that? 20 A. I see that. 21 Q. All right. And it says that, at the 22 end of that paragraph, "This SOM statistical 23 model will incorporate a number of new 24 enhancements to your current model to include:</p>	<p style="text-align: right;">Page 313</p> <p>1 referring to. I don't recall if we were not 2 doing that. 3 BY MR. ELSNER: 4 Q. Under number 2, it's to "Incorporate 5 third-party distribution data into the new SOM 6 model as available." 7 Do you see that? 8 A. I see where it says that. 9 Q. Okay. So we're going to incorporate 10 outside vendor distribution data into the SOM 11 model, correct? 12 MS. MILLER: Object to form. 13 A. I don't know what they mean by 14 third-party distribution data. 15 BY MR. ELSNER: 16 Q. You were part of the team that was 17 analyzing who CVS would hire to develop the new 18 SOM program, correct? 19 A. I participated in those discussions. 20 Q. And Buzzeo wasn't selected as the 21 vendor to use -- as the consultant to use for 22 that program, correct? 23 A. The system that we developed and 24 currently have in place today, we did not use</p>

<p style="text-align: right;">Page 314</p> <p>1 Buzzeo.</p> <p>2 Q. If you turn back to Mod Release 20,</p> <p>3 which is the prior exhibit, this is Exhibit 19,</p> <p>4 SOM End State Enhancement Solution.</p> <p>5 A. Okay.</p> <p>6 Q. And it says "Actions to Be Taken to</p> <p>7 Enhance CVS Process." Do you see where I'm</p> <p>8 reading?</p> <p>9 A. I see that.</p> <p>10 Q. Okay. And then under number 1, it</p> <p>11 says "Current Algorithm/Enhancements to</p> <p>12 Algorithm/Create New Algorithm," and then under</p> <p>13 "a" it says "Review our contracts with Buzzeo."</p> <p>14 Did I read that correctly?</p> <p>15 A. That's what that says.</p> <p>16 Q. Okay. And under that little Roman</p> <p>17 Numeral i, you write "Were they fired?"</p> <p>18 Do you see that?</p> <p>19 A. I see that.</p> <p>20 Q. Were they fired?</p> <p>21 MS. MILLER: Object to form.</p> <p>22 A. I'm not really sure what I was</p> <p>23 referring to when I wrote that. They were a</p> <p>24 consultant, and the term fired, I don't think we</p>	<p style="text-align: right;">Page 316</p> <p>1 Q. To the extent you know.</p> <p>2 MS. MILLER: -- to form. Object.</p> <p>3 To the extent it would reveal</p> <p>4 attorney/client communications, I instruct you</p> <p>5 not to answer.</p> <p>6 A. It wasn't my decision or call who was</p> <p>7 hired.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. Did anyone discuss with you any</p> <p>10 difficulties, frustrations with the Buzzeo</p> <p>11 Group?</p> <p>12 MS. MILLER: Object to form. Object</p> <p>13 on attorney/client privilege grounds.</p> <p>14 I instruct you not to answer to the</p> <p>15 extent it would reveal attorney/client</p> <p>16 communications.</p> <p>17 A. I don't recall any conversations</p> <p>18 regarding frustrations with Buzzeo as it relates</p> <p>19 to our SOM.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Was there any criticisms of the Buzzeo</p> <p>22 Group from anyone at CVS that you're aware of?</p> <p>23 MS. MILLER: Object to form. Object</p> <p>24 on attorney/client privilege grounds.</p>
<p style="text-align: right;">Page 315</p> <p>1 would fire, so I don't know what that means.</p> <p>2 BY MR. ELSNER:</p> <p>3 Q. That's what you wrote, right?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. That's what the document says.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. Interesting, everyone else that's been</p> <p>8 asked this question that I'm aware of answered</p> <p>9 "I'm not sure if you can fire a consultant, you</p> <p>10 have you to ask the person who wrote it." So</p> <p>11 you're the person who wrote it. So what did you</p> <p>12 mean when you wrote "were they fired?" There's</p> <p>13 no one else for me to ask. I've asked everyone</p> <p>14 else. You're it. What is CVS's answer?</p> <p>15 MS. MILLER: Object to form.</p> <p>16 A. I don't remember writing this</p> <p>17 document, but in 2012, three months into my time</p> <p>18 at CVS, I do not recall what I meant by were</p> <p>19 they fired.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. Why did CVS hire AGI instead of</p> <p>22 Buzzeo?</p> <p>23 MS. MILLER: Object --</p> <p>24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 317</p> <p>1 I instruct you not to answer. I</p> <p>2 instruct the witness not to answer to the extent</p> <p>3 it would reveal any attorney/client</p> <p>4 communications.</p> <p>5 A. I can't recall any specific</p> <p>6 frustrations or conversations around it.</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. Did you have a conversation with any</p> <p>9 attorney at CVS, and I don't want you to tell me</p> <p>10 what that conversation was, but did you have a</p> <p>11 conversation with any attorney at CVS before you</p> <p>12 prepared for this deposition today related to</p> <p>13 the firing of the Buzzeo Group?</p> <p>14 MS. MILLER: Object.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. Just yes or no.</p> <p>17 MS. MILLER: I'm going to object and</p> <p>18 instruct him not to answer.</p> <p>19 MR. ELSNER: On yes or no, whether he</p> <p>20 had a conversation about the topic --</p> <p>21 MS. MILLER: Well, you're saying --</p> <p>22 MR. ELSNER: -- without asking what</p> <p>23 the content of the conversation was?</p> <p>24 MS. MILLER: Well, you're saying in</p>

<p style="text-align: right;">Page 318</p> <p>1 your question, did you have a conversation with 2 any attorney related to the firing of the Buzzeo 3 Group. 4 BY MR. ELSNER: 5 Q. Did you have a conversation with any 6 attorney at CVS prior to your preparation for 7 this deposition today concerning the Buzzeo 8 Group? 9 A. Not that I recall. 10 MR. ELSNER: I don't understand the 11 basis of the objection. 12 Q. To prepare for the deposition today, 13 what did you do? 14 A. I had meetings with our internal and 15 outside counsel. 16 Q. How long did you meet with counsel 17 inside CVS to prepare for today's deposition? 18 MS. MILLER: Object to form. 19 A. I believe we met three or four times. 20 BY MR. ELSNER: 21 Q. How long were those meetings? 22 MS. MILLER: Object to form. 23 A. They varied in length. 24 BY MR. ELSNER:</p>	<p style="text-align: right;">Page 320</p> <p>1 MR. ELSNER: What's the objection? He 2 said most of the day, I asked six or 3 seven hours. What's the objection? 4 MS. MILLER: Six or seven hours of the 5 day yesterday? 6 MR. ELSNER: Yes. 7 MS. MILLER: Just wasn't clear. 8 MR. ELSNER: That's not a valid 9 objection. 10 BY MR. ELSNER: 11 Q. How many hours did you meet with your 12 counsel yesterday? 13 A. We were probably together for seven 14 hours. 15 Q. Okay. Did you review documents? Yes 16 or no. 17 MS. MILLER: Objection. 18 I'm going to instruct you not to 19 answer to the extent it would reveal any of the 20 documents that we discussed based on privilege 21 and work product. You may answer the question. 22 A. We reviewed documents. 23 BY MR. ELSNER: 24 Q. Did you meet with counsel before</p>
<p style="text-align: right;">Page 319</p> <p>1 Q. What's your best estimate of the total 2 number of hours you met with inside counsel to 3 prepare for today's deposition? 4 MS. MILLER: Object to form. 5 A. I don't recall how long I prepared 6 with inside counsel, counsel at -- our internal 7 CVS counsel. I don't recall. I can't put hours 8 on it. I can't recall how long. 9 BY MR. ELSNER: 10 Q. What about your outside counsel, how 11 many days, hours did you spend preparing for 12 your deposition with them? 13 A. We met three or four times. 14 Q. Did you meet yesterday? Don't say you 15 don't recall. 16 MS. MILLER: Object to form. 17 Objection. 18 BY MR. ELSNER: 19 Q. Did you meet with counsel yesterday? 20 A. Yes. 21 Q. How long? 22 A. Most of the day. 23 Q. Seven hours, six hours? 24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 321</p> <p>1 yesterday? 2 A. Yes. 3 Q. When was the prior meeting and how 4 long did it last, roughly? 5 A. Prior meeting was Tuesday. 6 Q. How long? 7 A. Most of the day. 8 Q. Six, seven hours? 9 A. I don't remember exactly. 10 MS. MILLER: Object to form. 11 A. I don't remember exactly how long. 12 BY MR. ELSNER: 13 Q. What time did you start? 14 A. Sometime after 10:00 o'clock. 15 Q. Where did you meet? 16 A. At One CVS. 17 Q. When did the meeting end; before 18 lunch, after lunch? 19 A. I don't recall when it ended. 20 Q. Dark outside, or not dark outside? 21 MS. MILLER: Object to form. 22 BY MR. ELSNER: 23 Q. This was Tuesday, right? 24 MS. MILLER: Object to form.</p>

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1 A. I don't recall exactly the time that
2 it ended.
3 BY MR. ELSNER:
4 Q. Did you meet for more or less than
5 four hours that day?
6 A. I don't remember exactly how long we
7 met. It was for a number of hours.
8 MR. ELSNER: To move this along, can
9 you give us an idea of how long you spent with
10 the witness preparing for the deposition? He
11 seems unable to recall what happened this week.
12 MS. MILLER: I'm not going to make a
13 representation. Ask your questions.
14 MR. ELSNER: You're unwilling to tell
15 us how long you met with the witness?
16 MS. MILLER: No, I just --
17 MR. ELSNER: He can't answer the
18 question.
19 MS. MILLER: He is answering the
20 question. He's trying --
21 MR. ELSNER: He says he can't
22 remember.
23 MS. MILLER: Well, he said --
24 MR. ELSNER: He can't remember when

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1 the meeting ended on Tuesday. It began at
2 10:00 in the morning, and he can't tell me when
3 it ended.
4 BY MR. ELSNER:
5 Q. Did you go past lunch? Did you work
6 into the evening? I mean, five, six hours?
7 Please, someone, either of you, tell me. Can
8 you answer the question?
9 A. Tuesday we met for a good part of the
10 day. I don't remember exactly.
11 Q. What does that mean, "a good part of
12 the day"?
13 A. I had many other meetings during the
14 day, so I don't know exactly how long we met
15 for.
16 Q. Prior to that meeting on Tuesday and
17 the one yesterday, did you meet with counsel to
18 prepare for the deposition before that?
19 A. We met on Monday.
20 Q. So you met on Monday, you met on
21 Tuesday, and you met yesterday. How long did
22 you spend on Monday preparing for the
23 deposition?
24 A. I believe Monday was a good part of

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1 the day.
2 Q. You spent a good part of the day
3 meeting with counsel on Monday, a good part of
4 the day meeting with counsel on Tuesday, and you
5 spent seven hours yesterday, is that right?
6 A. I don't know --
7 MS. MILLER: Object to form.
8 MR. ELSNER: That's what his testimony
9 was, right?
10 A. I don't know exactly how long we spent
11 yesterday, but it was most of the day, a good
12 part of the day.
13 BY MR. ELSNER:
14 Q. I thought you said seven hours.
15 Did you meet over the weekend?
16 A. We did not meet over the weekend.
17 Q. Did you meet last week?
18 A. We did not meet last week.
19 Q. And none of the process and system,
20 the questions that I've talked with you about
21 today, from 2014 to 2012, you did not have any
22 memory of any of those things we discussed,
23 correct?
24 MS. MILLER: Object to form.

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1 That's not what he testified to. He
2 testified --
3 MR. ELSNER: Well, the jury can
4 determine that.
5 BY MR. ELSNER:
6 Q. Is there something in particular that
7 you remember that we discussed today that you
8 can highlight for me?
9 MS. MILLER: Object to form.
10 The record speaks for itself. He's
11 testified about the processing systems between
12 2012 and 2014.
13 MR. ELSNER: You can say object to
14 form.
15 BY MR. ELSNER:
16 Q. What's the answer, please?
17 A. Nothing that we have reviewed today,
18 to the best of my recollection, I recall from
19 the time either they were created or they were
20 first reviewed by me. I don't recall the
21 documents.
22 Q. Did you meet with the Analysis Group
23 to consider their proposal to develop and
24 enhance suspicious monitoring system for CVS?

<p style="text-align: right;">Page 326</p> <p>1 A. I participated in meetings with AG 2 where enhancements to the system or the new 3 system were discussed. 4 Q. You were among the team that 5 reviewed -- that solicited and reviewed 6 proposals to partner with CVS in the development 7 of a suspicious order monitoring algorithm and 8 system, correct? 9 MS. MILLER: Objection. I'd like to 10 lodge an objection right after the question in 11 296:04. It's a follow-up to the prior question 12 I'd objected to, but I'd like that reflected on 13 the record. Thank you. 14 I apologize for interrupting on the 15 record. 16 BY MR. ELSNER: 17 Q. You were among the team that reviewed 18 and solicited -- that solicited and reviewed 19 proposals for consultants to assist CVS with its 20 development of an SOM algorithm and enhanced 21 program, correct? 22 A. I was part of a team that was 23 participating in conversations prior to 24 selecting a vendor. I don't remember viewing</p>	<p style="text-align: right;">Page 328</p> <p>1 column for Duration, Start, Finish, and 2 Percentage Complete. 3 Do you see that? 4 A. I see that. 5 Q. Okay. And you drafted this? 6 A. I don't know if I drafted this. 7 Q. You sent it to your boss, right? 8 A. I sent it to my boss. 9 Q. And you said these are the documents 10 that you mentioned in your status report, so are 11 these documents that you drafted or did somebody 12 else draft these? 13 A. I don't recall. I don't remember 14 drafting this. 15 Q. Would there have been anyone else that 16 would have drafted this, to your knowledge, that 17 you would have sent to Mr. Bourque? I couldn't 18 see any other e-mails where someone forwarded it 19 to you. 20 MS. MILLER: Object to form. 21 A. It's very possible someone else 22 drafted this. 23 BY MR. ELSNER: 24 Q. Who would it be?</p>
<p style="text-align: right;">Page 327</p> <p>1 any specific proposals. 2 Q. How many other vendors submitted 3 proposals? Was it anyone other than the Buzzeo 4 Group and the Analysis Group? 5 A. Those are the only two that I recall. 6 Q. Who would know if there are others? 7 MS. MILLER: Object to form. 8 A. I don't know who would know that. 9 MR. ELSNER: This is Motley Rice 9. 10 I'm going to mark this as the next exhibit. 11 (Whereupon, CVS-Schiavo-21 was marked 12 for identification.) 13 BY MR. ELSNER: 14 Q. This is another e-mail that you sent 15 to Tom Bourque. The date here is December 12, 16 2012. It reads "Opportunity Page, SOM Flow 17 Chart," and then you wrote "These are documents 18 mentioned in my status report just in case 19 Pawlik wants to see them when we are going over 20 the SOM slide or Inventory Cycle count slide." 21 Did I read that correctly? 22 A. That's what it says. 23 Q. Okay. And then it appears to be a 24 list of kind of action items, and there's an a</p>	<p style="text-align: right;">Page 329</p> <p>1 A. It could have been anyone on the 2 current SOM team. 3 Q. Okay. Can I ask you to look at 4 Page 103375? You see there's an ID number that 5 lists sequential numbers. If you go down to 48. 6 Do you see where I am? You go across 48. It 7 reads "Gap Analysis between current SOM & New." 8 Do you see that? 9 A. I see that. 10 Q. All right. And then if you go over to 11 Percentage Complete, it says 50 percent. 12 Do you see that? 13 A. I see where it says that. 14 Q. Okay. And then the Resource Names 15 associated with that analysis are you and 16 Tulley. Is that right? 17 A. Yes. 18 Q. Okay. So you were to perform a gap 19 analysis between the current SOM system in place 20 in 2012 and the new system that you were going 21 to develop, is that right? 22 MS. MILLER: Object to form. Object 23 on attorney/client privilege grounds. 24 To the extent the witness can answer</p>

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1 the question without revealing attorney/client
2 communications, you can answer.
3 A. I see what it says there. I see my
4 name with Tulley's name. I don't recall doing a
5 gap analysis. I don't recall doing that.
6 BY MR. ELSNER:
7 Q. Did CVS ever compare the old system
8 and come up with a list of items that are going
9 to be in the new system other than the documents
10 that I've shown you today that you drafted about
11 that? Is there anyone at CVS, to your
12 knowledge, that would do that?
13 MS. MILLER: Object to form. Object
14 on attorney/client privilege grounds.
15 And to the extent the witness can
16 answer the question without revealing
17 attorney/client communications, he can answer.
18 Otherwise I instruct him not to answer.
19 A. I don't recall anyone that did that.
20 BY MR. ELSNER:
21 Q. Your name is listed next to that task,
22 correct, with Tulley? Who is Tulley?
23 A. I believe that's Chris Tulley.
24 Q. And your name is listed with his as

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1 responsible for that task, correct?
2 A. My name with Chris's is in the
3 resources name.
4 Q. You were also responsible for
5 identifying all the DEA requirements in the next
6 item, correct, item 49?
7 A. I see my name there, but I don't think
8 I would be relied on to identify all DEA
9 requirements.
10 Q. If you go to the next page under 53,
11 it says "Develop an algorithm methodology to
12 find orders of interest (using Thresholding
13 approach)." You and Tulley are listed there,
14 correct?
15 MS. MILLER: Mike, where are you?
16 MR. ELSNER: I'm at 63.
17 MS. MILLER: 63.
18 MR. ELSNER: 103376.
19 MS. MILLER: Thank you.
20 A. I see my name there.
21 BY MR. ELSNER:
22 Q. Okay. It's one of your
23 responsibilities under the new SOM system, is
24 that right?

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1 MS. MILLER: Object to form.
2 A. I see what it says there, but at no
3 time do I recall it being my responsibility to
4 develop any kind of algorithm. I don't know how
5 I would do that.
6 MR. ELSNER: Why don't we go off the
7 record quickly?
8 THE VIDEOGRAPHER: We're going off the
9 record at 3:41 p.m.
10 (Whereupon, a recess was taken.)
11 THE VIDEOGRAPHER: We're back on the
12 record at 3:47 p.m.
13 BY MR. ELSNER:
14 Q. Mr. Schiavo, I put back before you
15 your year-end review from 2012. This is
16 Exhibit 9. We looked at this earlier. It's
17 dated January 25th, 2013. I'm going to ask you
18 to look at Page 8 of 11, which is at 120603.
19 A. Okay.
20 Q. Okay. And at the end of that first
21 full paragraph, it says "To date, I have
22 contributed to the following."
23 Do you see where I'm at?
24 A. I see where you're at.

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1 Q. Okay. And the first plus there, it
2 says "To identify gaps in the current SOM system
3 that need to be addressed when developing the
4 new system."
5 Did I read that correctly?
6 A. That's what that says.
7 Q. And did you do that?
8 MS. MILLER: Object to form.
9 A. I don't recall ever doing a deep dive
10 into the system at this time and identifying
11 CAPS. I think at the time of this review I was
12 probably with CVS for a few months.
13 BY MR. ELSNER:
14 Q. That's what you wrote, though, right,
15 "Identify gaps in the current SOM system that
16 need to be addressed when developing the new
17 system," correct?
18 A. That's what it says in my year-end
19 review.
20 Q. Okay. And that's what it said in the
21 document we just looked at, that you were going
22 to do a gap review, correct?
23 MS. MILLER: Object to form.
24 A. It's -- I recall it saying something

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1 about doing a gap analysis in the other
2 document.
3 BY MR. ELSNER:
4 Q. Comparing the old system to the new
5 system, right?
6 MS. MILLER: Object to form.
7 A. Can I look to see what the exact
8 wording was?
9 BY MR. ELSNER:
10 Q. Sure.
11 A. Do we know which number it was?
12 Q. I believe it was 48 or 49.
13 MS. VELDMAN: 63.
14 A. 63 was "Develop algorithm
15 methodology."
16 BY MR. ELSNER:
17 Q. I think it's the page before that.
18 A. 48 says "Gap analysis between current
19 SOM and new SOM."
20 Q. And that's what you wrote in your
21 review, "Identify gaps in the current SOM system
22 that need to be addressed when developing the
23 new system," right?
24 MS. MILLER: Object to form.

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1 A. It says I contributed to that process.
2 I don't remember to what extent.
3 BY MR. ELSNER:
4 Q. Okay. Two more plusses down it says
5 "Selecting AGI as the vendor to help develop an
6 algorithm in order to identify potentially
7 suspicious orders."
8 Did I read that correctly?
9 A. That's what it says.
10 Q. Okay. And then on 63 of the prior
11 exhibit, line 63, it says "Develop algorithm
12 methodology to find orders of interest."
13 Correct?
14 MS. MILLER: Object to form.
15 A. This is saying with my name next to it
16 "Develop algorithm methodology." But again, I
17 don't ever recall being in charge of developing
18 an algorithm.
19 BY MR. ELSNER:
20 Q. Well, one of the items that you wrote
21 in your annual review was "Selecting AGI as the
22 vendor to help develop an algorithm in order to
23 identify potentially suspicious orders." Is
24 that one of the things listed in your annual

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1 review?
2 A. It says that one of the things that I
3 contributed with was "selecting AGI to help
4 develop an algorithm," and I read that much
5 differently than me being responsible for
6 developing an algorithm.
7 Q. But you worked on it, right?
8 MS. MILLER: Objection to form.
9 BY MR. ELSNER:
10 Q. I didn't say you were the only one
11 responsible. That was one of the things you
12 worked on, right?
13 A. I was -- I participated in meetings
14 with other team members, but I don't think I had
15 a role in developing, writing the algorithm.
16 Q. Okay. Toward the bottom it says
17 "Drafting of the Stop Order/Order Resumption
18 SOP." You contributed to that, right?
19 MS. MILLER: Object to form.
20 You're on the --
21 BY MR. ELSNER:
22 Q. Back on your annual review, second to
23 last plus.
24 A. I see "Drafting of Stop Order/Order

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1 Resumption SOP." But that's not a -- that is
2 not a policy that I'm -- I recall or am familiar
3 with. I don't know if that was ever an official
4 policy.
5 Q. Well, we saw those documents today.
6 Was it not an official policy of CVS, the policy
7 that you drafted with Aaron Burtner?
8 MS. MILLER: Object to form.
9 And maybe it would be helpful to show
10 him the exhibit that you're referring to so he
11 can take a look.
12 BY MR. ELSNER:
13 Q. You don't recall working on that
14 policy with Aaron Burtner, a stop order policy,
15 whether we were going to ship -- whether we were
16 going to stop the order of that exact drug or
17 the family of drugs? We discussed it for about
18 20 minutes.
19 MS. MILLER: Object to form. He's
20 already given testimony on it.
21 MR. ELSNER: I know, that's why I
22 thought it would be simple to say one of the
23 things that was listed was the drafting of the
24 stop order/order resumption SOP.

<p style="text-align: right;">Page 338</p> <p>1 BY MR. ELSNER: 2 Q. That's one of the things listed in the 3 review, correct? 4 A. I don't recall the title of the policy 5 we reviewed today is the same policy that's 6 referred to right here. I don't recall the 7 title of the policies we reviewed today. 8 Q. Did you write in your annual review -- 9 did you write "Drafting of the Stop Order/Order 10 Resumption SOP"? Yes or no. 11 A. It says there that I drafted the stop 12 order/order resumption SOP, which is a policy. 13 I'm not sure what policy that's referring to. 14 Q. I know, we've established you can't 15 remember. 16 MS. MILLER: Object to form. 17 BY MR. ELSNER: 18 Q. The next plus says "Providing input on 19 key decisions (Reporting to DEA offices, what 20 drugs to hold when an order flags, whether or 21 not to include outside vendor orders)." 22 Correct? 23 A. That's what that says. 24 Q. Okay. So there was a discussion at</p>	<p style="text-align: right;">Page 340</p> <p>1 is in 2012 when I don't believe any final 2 decisions have been made on how our new or 3 enhanced system was -- all the elements that 4 were going to be in there. 5 BY MR. ELSNER: 6 Q. I understand. But that's one of the 7 things you provided input on, right, whether to 8 do the family of drugs or specific drugs or all 9 controlled drugs, right? 10 A. That's what it says. 11 Q. It also says you were going to provide 12 input on reporting to the DEA offices, correct? 13 A. That's what it says. 14 MR. ELSNER: Okay. Mark this next 15 document as Exhibit 22. This is Motley Rice 23. 16 (Whereupon, CVS-Schiavo-22 was marked 17 for identification.) 18 BY MR. ELSNER: 19 Q. CVS did hire the Analysis Group as a 20 consultant, right? 21 A. That's who we used to develop -- help 22 develop our SOM system. 23 Q. And so CVS hired them as a consultant, 24 is that right? Well, they didn't do it for</p>
<p style="text-align: right;">Page 339</p> <p>1 CVS whether or not to include outside vendor 2 orders as part of the SOM process in 2012, 3 correct? 4 MS. MILLER: Object to form. 5 A. In 2012 I believe we discussed the 6 potential of including OV order in the new or 7 enhanced system that we were building. 8 BY MR. ELSNER: 9 Q. Okay. And it did not exist in the old 10 system, right? 11 MS. MILLER: Object to form. 12 A. I don't recall if OV orders were part 13 of the old system or not. 14 BY MR. ELSNER: 15 Q. I'm going to mark this. 16 Also in there is you provided input on 17 another key decision, which was what drugs to 18 hold when an order flags, is that right, whether 19 to hold that specific drug or whether to hold 20 the family of drugs? That's one of the other 21 things that you provided input on for key 22 decisions, correct? 23 MS. MILLER: Object to form. 24 A. That's what it says. But again, this</p>	<p style="text-align: right;">Page 341</p> <p>1 free, right? 2 A. That's -- yes, that's who we used to 3 do it. 4 Q. And you hired them? 5 A. I didn't personally hire them. 6 Q. I asked if CVS hired them. 7 MS. MILLER: Object to form. 8 BY MR. ELSNER: 9 Q. Did CVS hire the Analysis Group to 10 assist it in developing its SOM program? 11 A. Yes, the Analysis Group helped us 12 developed our SOM. 13 Q. In February of 2013 there is this 14 note, that memo, from the Analysis Group which 15 is a request for data for the SOM algorithm data 16 inputs. Do you see that in the "Re" line? The 17 date is February 4, 2013. 18 A. I see that. 19 Q. And there's some -- there's a listing 20 here at the end of the second paragraph, there's 21 sort of some numbers here, 1 through 10. This 22 is the data that the Analysis Group was 23 requesting in order to build the algorithm. 24 Do you see that?</p>

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1 A. I see the listing of elements there
2 that it looks like they're requesting.
3 Q. Okay. Who at CVS was responsible for
4 gathering this information to provide to the
5 Analysis Group, to the extent you know?
6 A. I don't know who would have provided
7 this information.
8 Q. Did you ever review the information or
9 the data that the Analysis Group was going to
10 use to compile the algorithm?
11 A. I don't recall reviewing any specific
12 data provided to Analysis Group.
13 Q. Under 8 it says "Store dispensing,"
14 and it lists under A, B, C and D, prescription
15 information, patient information, prescriber
16 information, pharmacist information. Is this
17 information -- was that a component of the SOM
18 program in place in 2012 at CVS and early 2013?
19 MS. MILLER: Object to form.
20 A. I don't recall whether it was or was
21 not included.
22 BY MR. ELSNER:
23 Q. But it was information that was
24 include -- was sent to the Analysis Group to be

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1 included in its new algorithm for CVS, correct?
2 MS. MILLER: Object to form.
3 A. I see from this document that they
4 requested it.
5 BY MR. ELSNER:
6 Q. Do you know whether it was used by the
7 Analysis Group as a component of the algorithm?
8 MS. MILLER: Object to form.
9 A. I'm not -- I'm not familiar with
10 exactly what is in the algorithms.
11 BY MR. ELSNER:
12 Q. Well, do you know whether the system
13 analyzes dispensing information?
14 MS. MILLER: Object to form.
15 A. The current system we have today I
16 know takes into account dispensing information.
17 BY MR. ELSNER:
18 Q. And that system is based on the system
19 that the Analysis Group built for CVS, is that
20 right?
21 A. Yes, the current system we have today
22 is what the Analysis Group assisted with.
23 Q. And that includes prescribing
24 information, patient information, and pharmacist

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1 info, correct?
2 MS. MILLER: Object to form.
3 A. Speaking specifically to the
4 algorithms, I don't know what is in all of the
5 algorithms. However, I'm aware that these are
6 data elements that would be available to the SOM
7 analysts during due diligence.
8 BY MR. ELSNER:
9 Q. Today?
10 A. Today.
11 Q. Do you know what was available to the
12 SOM analysts in 2012 before this system went
13 into effect?
14 MS. MILLER: Object to form.
15 A. I don't know of all the information
16 that was available to them back in 2012.
17 BY MR. ELSNER:
18 Q. There was a period of time in which
19 the current SOM system was working at CVS and
20 you were working with the Analysis Group to
21 develop the new SOM system, correct?
22 A. I believe so.
23 Q. And the new SOM system that went into
24 effect did not go into effect until 2014, is

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1 that right?
2 A. I believe the new SOM system started
3 to roll out in 2014.
4 Q. 2014. It was on a rolling basis; you
5 did a few distribution centers at a time, is
6 that right?
7 A. I don't remember the exact dates, but
8 I know it was a rollout approach to the
9 distribution centers.
10 Q. You didn't hit all distributions at
11 one exact time with the new system, correct?
12 A. No, I don't believe they were all
13 rolled out at the same time.
14 Q. Okay. And that process of rollout
15 continued throughout 2014 into November of 2014,
16 is that right?
17 A. I don't recall the rollout schedule
18 and when it completed.
19 Q. But at least through 2012 when you
20 started through some point in 2014 CVS was using
21 the old system until the rollout for each
22 distribution center, and as the rollout came
23 into effect the new system would come into place
24 for that distribution center, is that right?

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1 MS. MILLER: Object to form.
2 BY MR. ELSNER:
3 Q. And the old distribution centers were
4 still using the old process, correct?
5 MS. MILLER: Object to form.
6 A. I know that at the time of the
7 rollout, obviously the rollout involved
8 distribution centers going onto the new
9 developed algorithm and may have also used the
10 old algorithm as well or old system as well.
11 And I believe at the time of the rollout the
12 distribution centers that it hadn't been rolled
13 out to were still utilizing the older suspicious
14 order monitoring process.
15 BY MR. ELSNER:
16 Q. Okay. There never came a point in
17 time where you, you know, went to Indianapolis
18 and sat down with the SOM analysts there that
19 were using the old SOM system to understand it,
20 is that true?
21 MS. MILLER: Object to form.
22 A. I've never been to the Indianapolis
23 distribution center.
24 BY MR. ELSNER:

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1 Q. Okay. Have you ever sat down with
2 anyone at CVS and reviewed an IRR report from
3 the old suspicious order monitoring system at
4 CVS?
5 MS. MILLER: Object to form.
6 A. I am aware there were IRR reports. I
7 don't recall going through one with anyone on
8 the SOM team.
9 BY MR. ELSNER:
10 Q. Do you know how to read one?
11 MS. MILLER: Object to form.
12 A. I don't recall having read an IRR. I
13 can't even think about it, whether -- I can't
14 remember what it looks like.
15 BY MR. ELSNER:
16 Q. Okay. That wasn't part of what you
17 did at CVS, right?
18 MS. MILLER: Object to form.
19 A. No, my role was never to review
20 orders.
21 BY MR. ELSNER:
22 Q. Okay. And no one from CVS sat down
23 with you and explained to you the system that
24 was in place with respect to suspicious order

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1 monitoring at CVS in 2012 or 2013 or '14 as that
2 system was being used before the new enhanced
3 system was put into place, is that right?
4 MS. MILLER: Object to form.
5 A. At a high level I think I understood
6 the process, but no, I never recall a
7 conversation that went into details of exactly
8 what that old system -- how it functioned.
9 BY MR. ELSNER:
10 Q. Okay. Were you aware that they had
11 staffing issues with respect to the SOM
12 management team in Indianapolis in 2013?
13 MS. MILLER: Object to form.
14 A. I don't recall any management staffing
15 issues.
16 BY MR. ELSNER:
17 Q. Do you recall any staffing shortages
18 or other staffing problems in the SOM review
19 team in 2013?
20 A. I don't recall any situations where we
21 couldn't review, well, orders of interest
22 that -- well, I don't remember there ever being
23 an instance where that was an issue.
24 Q. That wasn't my question. I asked you

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1 whether you were aware of any staffing shortages
2 or staffing issues in 2013.
3 MS. MILLER: Object to form.
4 A. I don't recall any staffing issues
5 that affected the SOM process.
6 BY MR. ELSNER:
7 Q. In June of -- in June of 2013, Aaron
8 Burtner left CVS, and Kelly Baker assumed Aaron
9 Burtner's responsibilities until a replacement
10 could be found, is that true?
11 A. I recall at some point Aaron left. I
12 don't remember exactly when that date was. And
13 I remember -- I somewhat remember working with
14 Kelly Baker on certain things. I don't know the
15 time frames.
16 (Whereupon, CVS-Schiavo-23 was marked
17 for identification.)
18 BY MR. ELSNER:
19 Q. This is Exhibit 23. If you go -- you
20 know, with all e-mails you've got to sort of
21 look at the first one first -- last one first if
22 you want to see the flow. So I'm going to ask
23 you to turn to Page 76116, which is the third
24 document of the e-mail I placed before you.

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1 A. Okay.

2 Q. And this e-mail is from Shawna

3 Leuhring. Did I say that correctly?

4 A. I'm not sure how to pronounce her last

5 name.

6 Q. Have you ever met her?

7 A. I don't recall meeting Shawna.

8 Q. Do you know who she works for?

9 A. At this time I'm not sure who she

10 reported to.

11 Q. But she was with CVS?

12 A. It says "Contractor" next to her name,

13 but I remember her working at CVS.

14 Q. Okay. And this is an e-mail that she

15 wrote to you dated July 1, 2013, is that right?

16 A. Yes.

17 Q. And she says "Craig and Team, I've

18 updated the Archer SOM prototype with the

19 'Prescriber' changes, by removing the Letter and

20 Call fields from the 'Review' tab and moved the

21 'Action' tab section over to the 'Review' tab.

22 Attached, please find screenshots of the revised

23 SOM record. Please review and let me know if

24 you see the need for any other changes."

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1 And then it says below "I'll also need

2 to get requirements for Access Control." And

3 then there's a question and it says "Who will be

4 entering in the SOM cases?"

5 Do you see that, question number 1?

6 A. I see where it says that.

7 Q. Okay. And if you see above her e-mail

8 there is an e-mail from you dated Tuesday,

9 July 2, 2013 to a number of people, including

10 Tom Bourque, Kelly Baker, Dean Vanelli.

11 Do you see that?

12 A. I see that.

13 Q. Okay. It says "Team, My comment are

14 in red, please review and make any

15 additions/changes necessary."

16 So basically what is happening here is

17 Shawna sends you an e-mail asking who is going

18 to gain access control, and then you write in

19 red the answers to those questions, and they're

20 bolded here.

21 And next to question 1, you -- next to

22 "Who will be entering in the SOM cases?", you

23 wrote "Kelly Baker and his team (yet to be

24 hired)," correct?

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1 MS. MILLER: Object to form.

2 A. That's what it says.

3 BY MR. ELSNER:

4 Q. Okay. So at this point in time we had

5 Kelly Baker reviewing -- doing the SOM review

6 for CVS, and you were going to include a team

7 which was yet to be hired, is that right?

8 A. That's what it says.

9 Q. And then it says "Who will be

10 approving the SOM cases" under question 4.

11 Do you see that?

12 A. I see what -- I see what it says, and

13 I'm not sure what that means.

14 Q. Okay. It says "Who will be approving

15 the SOM cases?" And you write in response

16 "Kelly Baker or Kelly's manager, or both."

17 So at this point in time Kelly Baker

18 did not have a manager because Aaron Burtner had

19 left, correct?

20 MS. MILLER: Object to form.

21 A. I don't know that to be true.

22 BY MR. ELSNER:

23 Q. Well, was there a manager of the SOM

24 program in Indianapolis in 2013?

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1 MS. MILLER: Object to form.

2 A. I'm sure there was. I don't remember

3 that team ever not having someone that managed

4 them, but I don't know who that was.

5 BY MR. ELSNER:

6 Q. Why are you sure?

7 A. I don't know if you're --

8 Q. It's about the only thing you've been

9 sure about today. What makes you so sure there

10 was a manager in place?

11 MS. MILLER: Objection to form.

12 A. Because I don't ever know of a

13 situation where someone worked at CVS and did

14 not have a manager.

15 BY MR. ELSNER:

16 Q. Well, there was a manager -- there was

17 a SOM manager position that Aaron Burtner had,

18 and he left CVS, right?

19 MS. MILLER: Object to form.

20 A. At some point he left CVS.

21 BY MR. ELSNER:

22 Q. Okay. And so they needed to fill that

23 position, right?

24 A. I don't know if they needed to fill

<p style="text-align: right;">Page 354</p> <p>1 that position, but -- I don't know if they 2 needed to fill that position. 3 Q. Do you know whether they tried to, 4 sent out an ad to fill the position? 5 A. I don't recall this process. I don't 6 know if I was even a part of that process. 7 Q. If we move forward in the -- to the 8 prior page of the e-mail, at the very top 9 there's an e-mail from Kelly Baker to you dated 10 July 9, 2013. 11 Do you see that? 12 A. The one at 3:51 p.m.? 13 Q. That's the one, yes. 14 A. I see that e-mail. 15 Q. Okay. And he writes "Craig, not 16 really pertaining to your question, but I did 17 want to highlight to the group that you note 18 that I do not," in all caps, "have a backup. 19 Even our hourly assistant has limited access. 20 If something happens to me via act of nature or 21 illness, the current daily SOM process would 22 come to a complete halt." 23 Did I read that correctly? 24 A. That's what it says.</p>	<p style="text-align: right;">Page 356</p> <p>1 that to be true, but that's what he wrote. 2 Q. He said -- then he writes "I am not 3 aware of a risk assessment or action plans in 4 place to address." 5 Is that what he wrote? 6 A. I see that written there. 7 Q. Okay. And your response to Kelly, 8 just Kelly, which is about a little over a half 9 hour later, you write "Kelly, Thanks for the 10 heads up! That is something we will need to 11 discuss." 12 Is that your response? 13 A. That's what it says. 14 MR. ELSNER: This is Exhibit 24. 15 (Whereupon, CVS-Schiavo-24 was marked 16 for identification.) 17 BY MR. ELSNER: 18 Q. Now, you take this same exact e-mail 19 that Kelly Baker sent to you and to Tom Bourque 20 and to others on July 9, 2013 at 3:51 p.m., and 21 then you forwarded that e-mail a minute later to 22 Tom Bourque, and you write "This is not good..." 23 correct? 24 A. I see that.</p>
<p style="text-align: right;">Page 355</p> <p>1 Q. So at this point in time Kelly Baker 2 didn't have anyone else helping him with the SOM 3 review process, and if something were to happen 4 to him, he writes "the system would come to a 5 complete halt," is that right? 6 MS. MILLER: Object to form. 7 A. It looks like he says "Even our hourly 8 assistant has limited access," so it seems as if 9 he did have someone else that was helping him 10 based on that e-mail. 11 BY MR. ELSNER: 12 Q. With limited access, yes. But no one 13 else, right? 14 MS. MILLER: Object to form. 15 A. I don't know what he's referring to by 16 limited access. And I see where he's indicating 17 "I do not have a backup." 18 BY MR. ELSNER: 19 Q. And he indicated that if something 20 were to happen to him "via act of nature or 21 illness, the current daily SOM process would 22 come to a complete halt." Is that what he 23 wrote? 24 A. That's what he wrote. I don't know</p>	<p style="text-align: right;">Page 357</p> <p>1 Q. Okay. So it's not good, agreeing that 2 there's not a risk assessment or action plan in 3 place to address this, right? 4 MS. MILLER: Object to form. 5 A. I see that it's written that it's not 6 good. But in terms of what we just reviewed, I 7 don't see anything in concerns with -- in 8 concern to SOM not functioning appropriately. 9 BY MR. ELSNER: 10 Q. Well, in response to Kelly Baker's 11 e-mail to you saying that he didn't have backup 12 and "If something happens to me via act of 13 nature or illness, the current SOM process would 14 come to a complete halt," you take that e-mail 15 and forward it to your boss, Tom Bourque, with 16 the message "This is not good," right? 17 MS. MILLER: Object to form. 18 A. I forwarded what Kelly said to Tom 19 Bourque saying "This is not good" referring to 20 the hypothetical situation of if Kelly was out 21 and him saying the SOM process would come to a 22 halt, although -- 23 BY MR. ELSNER: 24 Q. Is that what you wrote?</p>

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1 A. That's what I wrote.
2 MR. ELSNER: This is Exhibit 25.
3 (Whereupon, CVS-Schiavo-25 was marked
4 for identification.)
5 BY MR. ELSNER:
6 Q. The prior exhibit, Tom Bourque
7 responds to you in Motley Rice 89 that "We can
8 discuss with Dean" in response to your e-mail.
9 Do you see that?
10 A. At the top, yes, "We can discuss with
11 Dean."
12 Q. So that was Tom's response.
13 And Dean Vanelli writes a response on
14 July 9th to you and to Kelly Baker. Do you see
15 that in the middle of Motley Rice 90, this
16 exhibit?
17 A. I see that.
18 Q. It says the action plans include
19 backfilling Aaron's role is already in progress
20 and creating a staffing plan to operate under
21 the new system.
22 So this indicates that they're trying
23 to find a manager to fill Aaron Burtner's role,
24 correct, an SOM manager?

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1 A. I don't recall Kelly reporting to
2 Aaron, but this is Dean saying that they're
3 looking to backfill Aaron's role.
4 Q. And two sentences -- or the next
5 sentence later, the last sentence in the first
6 paragraph of Dean Vanelli's e-mail, he writes "I
7 agree there is a short-term risk if something
8 were to happen with Kelly, especially until
9 we...fill Aaron's role and on board the planned
10 staffing increase on the Indy SOM team."
11 So Dean Vanelli agrees that there's a
12 short-term risk, the risk that Kelly Baker
13 highlights, correct?
14 MS. MILLER: Object to form.
15 A. Dean wrote this e-mail. You'd have to
16 ask him what he meant by short-term risk and
17 what the risk was.
18 BY MR. ELSNER:
19 Q. But that's what he wrote, right, "I
20 agree there's a short-term risk" in response to
21 Kelly Baker's e-mail to you?
22 A. He wrote there's a short-term risk.
23 Q. If something were to happen to Kelly,
24 right?

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1 A. That's what he wrote.
2 Q. Okay. Then he separately at the
3 bottom of that e-mail says "Craig" -- do you see
4 where I'm at?
5 A. At the bottom, yes.
6 Q. It says "We will fill in additional
7 players as we backfill Aaron's head count and
8 build the team to support the new process."
9 Do you see that?
10 A. I see that.
11 Q. Then he says "Over and above, I would
12 add the following individuals to the read only
13 list: Mark Nicastro (Indy DC director) and Amy
14 Propatier (my backup)." Did I read that
15 correctly?
16 A. I see that.
17 Q. Okay. Did you know that Mark Nicastro
18 and Amy Propatier have no idea how to read an
19 IRR report?
20 MS. MILLER: Object to form.
21 A. I don't recall ever knowing whether
22 they could or could not read an IRR report.
23 BY MR. ELSNER:
24 Q. Okay. So Dean Vanelli's suggestion to

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1 you is to add them, the two of them, to the
2 list of -- list of people that you were
3 creating, to the read only list, and you don't
4 know whether or not they can read an IRR report,
5 correct?
6 MS. MILLER: Object to form.
7 A. I don't recall whether I knew if they
8 could or could not.
9 BY MR. ELSNER:
10 Q. You have no knowledge about whether
11 they were qualified to perform that role,
12 correct?
13 MS. MILLER: Object to form.
14 A. I do not recall whether I knew or did
15 not know if they could read an IRR report.
16 BY MR. ELSNER:
17 Q. Did you add them as the backup?
18 MS. MILLER: Object to form.
19 A. I don't recall.
20 BY MR. ELSNER:
21 Q. You didn't do any other investigation
22 to determine whether it was appropriate to add
23 Mark Nicastro or Amy Propatier to the system,
24 did you?

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1 A. I can't recall if I did or I didn't,
2 nor at that time would it be my role. Dean was
3 in logistics, I believe that would be his
4 decision.
5 Q. Okay. And you didn't do any
6 investigation to determine whether that decision
7 was appropriate or not, right?
8 MS. MILLER: Object to form.
9 A. I don't recall whether I did or did
10 not, or whether or not Mark or Amy could read an
11 IRR. I don't know.
12 BY MR. ELSNER:
13 Q. Was that part of your practice, if
14 your boss said add someone to the list, would
15 you do it, or would you do your own
16 investigation to determine whether they're
17 qualified to do that?
18 MS. MILLER: Object to form.
19 A. Dean was not my boss.
20 BY MR. ELSNER:
21 Q. Sorry?
22 A. Dean was not my boss.
23 Q. Okay. Did you rely on Dean's
24 recommendation, or did you conduct your own

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1 investigation, or was it your practice to
2 conduct an investigation, or no?
3 MS. MILLER: Object to form.
4 A. In this case I don't recall doing my
5 own investigation. In reading this, I don't
6 even know what Dean is referring to or if I had
7 the ability to add anyone to anything. I don't
8 know what he's referring to here.
9 BY MR. ELSNER:
10 Q. If we go back to Exhibit 23, which is
11 the initial e-mail exchange that we started
12 with.
13 A. Okay.
14 Q. On the very first page, 76114, there's
15 an e-mail from Kelly Baker to you in reply to
16 the e-mail that you sent to him on July 9th. He
17 then sends you an e-mail on Thursday, July 11,
18 2013.
19 Do you see that?
20 A. I see that.
21 Q. Okay. And he writes "Craig, another
22 concern I have is the Store Metric Report I use
23 to analyze the BVRs on the IRR."
24 Do you see that?

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1 A. I see that. And I do not recall what
2 BVRs means.
3 Q. You actually didn't recall then
4 either, so you sent him an e-mail and asked, and
5 he said -- and he answered the question. If I
6 can find the e-mail, I'll send it to you.
7 "The data snapshot is a three-month
8 window that is a year old. Any analysis that I
9 make from the data is, for the most part,
10 irrelevant and pointless."
11 Do you see that?
12 A. I see where he wrote that.
13 Q. Do you agree with him?
14 MS. MILLER: Object to form.
15 A. I don't have any other information to
16 make a determination whether or not I would
17 agree with that.
18 BY MR. ELSNER:
19 Q. Okay. He then writes, "I know this
20 tool will be going away and may not be cost
21 effective to update. But I'm wasting a lot of
22 man-hours. I don't understand why they just
23 can't rerun the query for a token amount. They
24 would not have to rewrite the scripts or code.

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1 "In any event, the big issue is of
2 false negatives and the risks associated with
3 something slipping by."
4 Kelly Baker thought because he was
5 reviewing outdated data that there was a risk
6 that a suspicious order would slip by him,
7 correct?
8 MS. MILLER: Object to form.
9 A. I see what Kelly wrote here. I can't
10 speak to what he was thinking.
11 BY MR. ELSNER:
12 Q. Did it concern you that when you
13 received this e-mail that he was relying on
14 outdated data and that he was worried that there
15 was the possibility that an order for -- a
16 suspicious order for a controlled substance
17 would slip by him?
18 MS. MILLER: Object to form.
19 A. I don't recall what I thought when I
20 received this e-mail.
21 BY MR. ELSNER:
22 Q. Do you know what you did with it?
23 MS. MILLER: Object to form.
24 A. I don't recall this situation.

<p style="text-align: right;">Page 366</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Kelly then writes to Mark Nicastro</p> <p>3 above and he says "Mark, I didn't include you on</p> <p>4 this original because of your full mailbox. The</p> <p>5 BVR are orders flagged based on volume, ratio or</p> <p>6 both."</p> <p>7 Do you see that?</p> <p>8 A. I see where it says that.</p> <p>9 Q. And he then writes, "Really just a CYA</p> <p>10 for me. I'm pretty sure Aaron mentioned this to</p> <p>11 the SOM development team, but I don't want them</p> <p>12 to use me as the sacrificial lamb when or if it</p> <p>13 hits the fan because something slipped through."</p> <p>14 Did I read that correctly?</p> <p>15 A. That's what that e-mail says.</p> <p>16 Q. Were you aware that Kelly Baker was</p> <p>17 afraid that he was going to take the blame for</p> <p>18 suspicious orders slipping through based on the</p> <p>19 old data he was provided to produce suspicious</p> <p>20 orders?</p> <p>21 MS. MILLER: Object to form.</p> <p>22 A. The e-mail that you're showing me I'm</p> <p>23 not even on, and I don't ever recall that being</p> <p>24 a concern. I don't recall that being a concern.</p>	<p style="text-align: right;">Page 368</p> <p>1 A. I don't know why he sent this to me.</p> <p>2 You'd have to ask Kelly.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. Did you think that he -- did he think</p> <p>5 that you were the best person to try to fix the</p> <p>6 system that was broken at CVS?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 A. You would have to ask Kelly. I don't</p> <p>9 know what Kelly thought.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. You weren't his supervisor, right?</p> <p>12 A. I was not Kelly's supervisor.</p> <p>13 Q. Mark Nicastro was one of the people he</p> <p>14 reported to, and Mark's mailbox was full so he</p> <p>15 then reaches out to you.</p> <p>16 MS. MILLER: Object to form.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Why?</p> <p>19 A. You would have to ask Kelly.</p> <p>20 Q. I will.</p> <p>21 MR. ELSNER: This is Exhibit 26.</p> <p>22 (Whereupon, CVS-Schiavo-26 was marked</p> <p>23 for identification.)</p> <p>24 BY MR. ELSNER:</p>
<p style="text-align: right;">Page 367</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. Well, he was concerned about it,</p> <p>3 right?</p> <p>4 MS. MILLER: Object to form.</p> <p>5 A. He sent that e-mail to Mark. I don't</p> <p>6 know what follow-up conversations or -- I don't</p> <p>7 know, I'm not on that e-mail, I didn't have</p> <p>8 further conversations on that.</p> <p>9 BY MR. ELSNER:</p> <p>10 Q. He sent the first e-mail to you, and</p> <p>11 he said the same thing, he's worried about the</p> <p>12 risks associated with something slipping by.</p> <p>13 That's what he wrote you, correct?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. It says in that e-mail -- that's what</p> <p>16 it says in the e-mail.</p> <p>17 BY MR. ELSNER:</p> <p>18 Q. Why did he write this to you?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. I don't know why he sent this to me.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. Did he think you could help him try to</p> <p>23 fix this?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 369</p> <p>1 Q. This is Motley Rice 78116, and</p> <p>2 Exhibit 26. If you look at the top of the</p> <p>3 second page, if you look at the top of the</p> <p>4 second page, this is the e-mail that Kelly Baker</p> <p>5 sent to you, and you have an exchange with him</p> <p>6 on what BVR is, as I promised you I'd show you,</p> <p>7 right? You asked -- you said "Kelly, Quick</p> <p>8 question that I should probably know the answer</p> <p>9 to... what is a BVR?" Right?</p> <p>10 A. Where is that? I'm sorry.</p> <p>11 Q. I'm sorry. The bottom of the first</p> <p>12 page.</p> <p>13 A. An e-mail from me?</p> <p>14 Q. I'm sorry, are you on Exhibit 26?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. "Kelly, Quick question that I</p> <p>17 should probably know the answer to...what is a</p> <p>18 BVR?" And he responds to you what it is. And</p> <p>19 then you forward this e-mail exchange to Tom</p> <p>20 Bourque on July 16, 2013, correct, and you write</p> <p>21 to Tom and you write -- and this is your boss,</p> <p>22 right?</p> <p>23 A. At this time Tom Bourque is my boss.</p> <p>24 Q. Okay. And you write to Tom, "FYI -</p>

<p style="text-align: right;">Page 370</p> <p>1 Kelly brings up another concern about the 2 current process and the data he is looking 3 at...seems that some of the information he is 4 using is very old and not helpful. Don't think 5 there is anything we can do about it now, but 6 just wanted to let you know." 7 Is that what you wrote to him? 8 MS. MILLER: Object to form. 9 A. That's what it says. 10 BY MR. ELSNER: 11 Q. And there wasn't anything done to 12 change the process, correct? 13 MS. MILLER: Object to form. 14 A. I don't know that to be the case. 15 MR. ELSNER: Why don't we go off the 16 record for a minute. 17 THE VIDEOGRAPHER: We're going off the 18 record at 4:34 p.m. 19 (Whereupon, a recess was taken.) 20 THE VIDEOGRAPHER: We're back on the 21 record at 4:37 p.m. 22 BY MR. ELSNER: 23 Q. Mr. Schiavo, I'm going to show you 24 what's been marked as Exhibit 27.</p>	<p style="text-align: right;">Page 372</p> <p>1 queue and assigning easy drug families to 2 herself in order to not have to pick drug 3 families that normally would require more due 4 diligence." Did I read that right? 5 A. That's what it says. 6 Q. Okay. And so at this point in time 7 you were doing a review? Shan was one of the 8 suspicious order monitoring analysts, right? 9 A. Yes, I believe so at the time. 10 Q. Okay. And in the second paragraph you 11 write, "Also, when going through some of the 12 cases she is reviewing it looks like she is copy 13 and pasting quite frequently which leads me to 14 believe she is not putting in the time to review 15 each case separately and reviewing all 16 applicable data to make a decision on whether or 17 not an order is legitimate." Did I read that 18 correctly? 19 A. That's what it says. 20 Q. The next paragraph you write "I think 21 it is important that this gets addressed as soon 22 as possible as this could pose a huge risk to 23 our company if this function is not done 24 effectively." Correct?</p>
<p style="text-align: right;">Page 371</p> <p>1 (Whereupon, CVS-Schiavo-27 was marked 2 for identification.) 3 BY MR. ELSNER: 4 Q. This is an e-mail that you sent to Tom 5 Bourque, the subject being the "SOM Team" dated 6 June 19, 2014. 7 Do you see that? 8 A. I see that. 9 Q. Okay. And it reads, "I wanted to run 10 this by you before I sent. I know we" are 11 having "the meeting with Pawlik today to discuss 12 SOM so I don't know if you want me to hold off 13 on sending the e-mail below to Susan but I 14 looked at some information today that is 15 concerning and I feel need to be addressed." Is 16 that right? 17 A. I see that's what it says. 18 Q. Okay. Then you send him a sort of 19 draft note that you had drafted to send to 20 Susan, correct? 21 A. It looks like that's what I did. 22 Q. Okay. And it reads "As we discussed 23 earlier this week, I have heard some concerns 24 from the SOM team around Shan going ahead in the</p>	<p style="text-align: right;">Page 373</p> <p>1 MS. MILLER: Object to form. 2 A. I see where that is written. 3 BY MR. ELSNER: 4 Q. And it was accurate, right? You 5 believed that to be true? 6 MS. MILLER: Object to form. 7 A. At the time I recall believing that at 8 times Shan would cherry-pick some orders. 9 BY MR. ELSNER: 10 Q. And cut and paste her suspicious order 11 monitoring review as well, correct? 12 A. I don't recall her ever just a blanket 13 copy and paste that led me to -- I don't recall 14 ever thinking that she wasn't doing a review. I 15 think she was just copying and pasting in some 16 cases. 17 Q. Well, you wrote, did you not, that 18 "Some of the cases she is reviewing it looks 19 like she is copying and pasting quite frequently 20 which leads me to believe she is not putting in 21 the time to review each case separately and 22 reviewing all applicable data to make a decision 23 on whether or not an order a legitimate." 24 Correct?</p>

<p style="text-align: right;">Page 374</p> <p>1 MS. MILLER: Object to form.</p> <p>2 A. I see that's what's written there.</p> <p>3 But this is a draft, I don't know if that's</p> <p>4 exactly how I meant that to read. I was sending</p> <p>5 this to Tom for feedback. So I don't know if we</p> <p>6 changed this to be more clear on exactly what I</p> <p>7 meant.</p> <p>8 BY MR. ELSNER:</p> <p>9 Q. But that's what you wrote, right?</p> <p>10 MS. MILLER: Object to the form.</p> <p>11 A. That's what this draft of a potential</p> <p>12 e-mail says, but I don't believe that's what I</p> <p>13 meant, or that I had concern she wasn't doing a</p> <p>14 good job at reviewing orders.</p> <p>15 BY MR. ELSNER:</p> <p>16 Q. You don't believe that's accurate?</p> <p>17 You purposely wrote something inaccurate to your</p> <p>18 boss?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. I wouldn't say I was writing something</p> <p>21 to purposely be inaccurate. I think it might be</p> <p>22 poorly worded.</p> <p>23 (Whereupon, CVS-Schiavo-28 was marked</p> <p>24 for identification.)</p>	<p style="text-align: right;">Page 376</p> <p>1 diligence. Not each team member is aligned with</p> <p>2 the importance of reaching out to our stores in</p> <p>3 order to comply with the 'Know Your Customer'</p> <p>4 expectation. This could also lead to</p> <p>5 inconsistencies in the...process of what orders</p> <p>6 should be released or blocked," correct?</p> <p>7 A. That --</p> <p>8 MS. MILLER: Object to form.</p> <p>9 A. That is what that potential risk says.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. And then it writes in the comments,</p> <p>12 "In May, the following is the percentage of</p> <p>13 calls each team member made for flagged orders:</p> <p>14 Annette, 19 percent." Then there's another</p> <p>15 individual at 15 percent, Noah at 13 percent,</p> <p>16 Caitlin at 7 percent, and Shan at 4 percent.</p> <p>17 Did I read that correctly?</p> <p>18 A. That's what that says.</p> <p>19 Q. Okay. So part of the due diligence</p> <p>20 process at CVS at this time in June of 2014 --</p> <p>21 and this is under the new system, right?</p> <p>22 MS. MILLER: Object to form.</p> <p>23 A. I don't recall if it's rolled out to</p> <p>24 all distribution centers, but I believe at some</p>
<p style="text-align: right;">Page 375</p> <p>1 BY MR. ELSNER:</p> <p>2 Q. If you go to the next document I've</p> <p>3 shown you, we've marked it as Exhibit 28. This</p> <p>4 is another e-mail to Tom Bourque actually two</p> <p>5 days before the e-mail we just looked at, "SOM</p> <p>6 Risk Analysis." You write "Tom, I have made the</p> <p>7 updates we discussed." And then you say there</p> <p>8 may be one we want to change from medium to high</p> <p>9 or both. And attached to that is an SOM risk</p> <p>10 analysis that you created, correct?</p> <p>11 A. This is an SOM risk analysis that was</p> <p>12 created. I don't recall creating the document,</p> <p>13 but it's a risk analysis.</p> <p>14 Q. Okay. And did somebody else create</p> <p>15 it?</p> <p>16 MS. MILLER: Object to form.</p> <p>17 A. I don't recall if I was the one who</p> <p>18 started this document, but I clearly made</p> <p>19 updates to it, based on the e-mail.</p> <p>20 BY MR. ELSNER:</p> <p>21 Q. And there's lists of potential risks.</p> <p>22 And the first one, the risk level there is</p> <p>23 listed as high, and you write "The SOM team is</p> <p>24 inconsistent in the way they perform their due</p>	<p style="text-align: right;">Page 377</p> <p>1 point this was just newly rolled out to some</p> <p>2 distribution centers.</p> <p>3 BY MR. ELSNER:</p> <p>4 Q. Well, these individual are the</p> <p>5 suspicious order monitoring analysts working in</p> <p>6 Rhode Island that you participated in hiring to</p> <p>7 work on the new SOM system, right?</p> <p>8 A. These are the SOM analysts who I</p> <p>9 recall being part of the interview process.</p> <p>10 Q. Okay. And less than 20 percent of</p> <p>11 flagged orders were calls made to pharmacies,</p> <p>12 correct?</p> <p>13 MS. MILLER: Object to form.</p> <p>14 A. Based on what that's indicating there,</p> <p>15 yes. I don't know how those percentages could</p> <p>16 be pulled or how they were pulled, but that's</p> <p>17 what that's saying.</p> <p>18 BY MR. ELSNER:</p> <p>19 Q. Well, if you turn to the last page of</p> <p>20 your e-mail to Tom Bourque on the prior exhibit,</p> <p>21 the very last page of the exhibit, there's a</p> <p>22 chart there of the percentage of phone calls,</p> <p>23 correct?</p> <p>24 MS. MILLER: Sorry, where are you,</p>

<p style="text-align: right;">Page 378</p> <p>1 Mike?</p> <p>2 MR. ELSNER: Prior exhibit, last page.</p> <p>3 MS. MILLER: That one -- oh, last</p> <p>4 page.</p> <p>5 A. It says "Team Member. Count of Case</p> <p>6 Status." It has the percent of phone calls. I</p> <p>7 don't see how that's calculated or how someone</p> <p>8 would indicate from this the percent of phone</p> <p>9 calls, though.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Okay. If you go back to Exhibit 28,</p> <p>12 the third item down for lack of -- that's listed</p> <p>13 as a high risk is "Lack of engagement by the</p> <p>14 Management team." Did I read that correctly?</p> <p>15 A. It says that under "Potential Risk."</p> <p>16 Q. Okay. And you write "The team is not</p> <p>17 receiving the support and guidance they need to</p> <p>18 effectively do their jobs. Since Susan has</p> <p>19 started she has not taken an active role in</p> <p>20 learning the position and finding the area of</p> <p>21 opportunity within the team." Did I read that</p> <p>22 correctly?</p> <p>23 A. That's what the document says.</p> <p>24 Q. And you believe that that was a high</p>	<p style="text-align: right;">Page 380</p> <p>1 A. That is what this form says. I don't</p> <p>2 know if I wrote that. That's what the form</p> <p>3 says.</p> <p>4 BY MR. ELSNER:</p> <p>5 Q. That's in the chart that you forwarded</p> <p>6 to your boss, correct?</p> <p>7 MS. MILLER: Object to form.</p> <p>8 A. That appears to be in the chart that I</p> <p>9 sent to Tom.</p> <p>10 BY MR. ELSNER:</p> <p>11 Q. Okay. And then in the middle under</p> <p>12 "Comments," it says "To date the team is</p> <p>13 struggling to complete the amount of flagged</p> <p>14 daily orders. With six more distribution</p> <p>15 centers still to be rolled out, there has been</p> <p>16 no plan communicated on how the team intends to</p> <p>17 handle the increased volume." Did I read that</p> <p>18 correctly?</p> <p>19 MS. MILLER: Object to form.</p> <p>20 A. That's what it -- that's what it says.</p> <p>21 BY MR. ELSNER:</p> <p>22 Q. And that was another high risk</p> <p>23 identified, correct?</p> <p>24 MS. MILLER: Object to form.</p>
<p style="text-align: right;">Page 379</p> <p>1 risk, correct?</p> <p>2 MS. MILLER: Object to form.</p> <p>3 A. It says the risk level is high. I</p> <p>4 don't know how risk level was interpreted or</p> <p>5 what the risk is referring to, but under "Risk</p> <p>6 Level" for that one it does say "High."</p> <p>7 BY MR. ELSNER:</p> <p>8 Q. And also then the next one, another</p> <p>9 high risk you identify is the "Lack of</p> <p>10 communication from the SOM Management team to</p> <p>11 the SOM Analysts, as well as a lack of foresight</p> <p>12 by the Management team." Did I read that</p> <p>13 correctly?</p> <p>14 MS. MILLER: Object to form.</p> <p>15 A. That's what this document says.</p> <p>16 BY MR. ELSNER:</p> <p>17 Q. And the next item, another high risk,</p> <p>18 "Lack of resources to handle the rollout of all</p> <p>19 distribution centers. This could freeze the</p> <p>20 rollout of the remaining six distribution</p> <p>21 centers or cause the team to not get to every</p> <p>22 flagged order each day," correct? Is that what</p> <p>23 you wrote?</p> <p>24 MS. MILLER: Object to form.</p>	<p style="text-align: right;">Page 381</p> <p>1 A. It's under "Risk Level. High."</p> <p>2 Again, I don't know what thought process went</p> <p>3 into putting these risk levels, and for that one</p> <p>4 I'm not really sure exactly what the risk would</p> <p>5 be.</p> <p>6 BY MR. ELSNER:</p> <p>7 Q. Go to the next one. Another high risk</p> <p>8 level, "Today we are unclear how well the system</p> <p>9 is identifying orders that should actually be</p> <p>10 flagged (false positive rate and tests that need</p> <p>11 to be more stringent?)" Did I read that</p> <p>12 correctly?</p> <p>13 A. That's what it says.</p> <p>14 Q. And --</p> <p>15 MS. MILLER: I just -- I understand</p> <p>16 we're at seven hours. Are we past seven hours?</p> <p>17 THE VIDEOGRAPHER: We're just at seven</p> <p>18 hours now.</p> <p>19 MS. MILLER: Okay. So after this</p> <p>20 question.</p> <p>21 MR. ELSNER: I'll probably ask two</p> <p>22 questions here, three.</p> <p>23 MS. MILLER: Okay.</p> <p>24 BY MR. ELSNER:</p>

<p style="text-align: right;">Page 382</p> <p>1 Q. "The SOM Algorithm" in the next one 2 "is not flagging the drugs which are diverted 3 the most at our retail locations at a high 4 enough rate." And that's identified as a 5 medium/high risk, correct? 6 MS. MILLER: Objection to form. 7 A. High/medium is under the risk level 8 column. 9 BY MR. ELSNER: 10 Q. Okay. And so -- 11 MS. MILLER: Mike, you're out of time. 12 So you can ask -- 13 MR. ELSNER: I'm just going to finish 14 this. I've got another question to ask, and 15 I'll just finish with this document. 16 MS. MILLER: This is the last 17 question. This is the last question. 18 BY MR. ELSNER: 19 Q. As of June of 2014, you were still 20 finding high risk levels even with the new 21 rollout of the new system with respect to 22 staffing issues, resources to handle the review 23 of orders, and consistent performance of due 24 diligence reviews, correct?</p>	<p style="text-align: right;">Page 384</p> <p>1 won't let him answer the question. You wanted 2 to see what the question was first? You said 3 one more question, and I asked him one more 4 question. 5 MS. MILLER: But now I've realized -- 6 MR. ELSNER: It's a good question? 7 MS. MILLER: -- it's not fair for 8 you -- no, it's not fair for you to continue 9 after seven hours, and I think we should cut it 10 off. 11 MR. ELSNER: No, you said I could get 12 one more question, and that's what I've done. 13 Let him answer the question. 14 MS. MILLER: I'm instructing him not 15 to answer. We're done. We're out of time. 16 MR. ELSNER: I think you should answer 17 the question. 18 I'm going to go to the court and ask 19 for more time. I think this has been 20 ridiculous. I think he hasn't admitted at any 21 point offering any document, remembering any 22 documents. You had three days prepping him, and 23 he's giving us nothing that he could potentially 24 remember at all at CVS. And you told me I could</p>
<p style="text-align: right;">Page 383</p> <p>1 MS. MILLER: Objection to form. And 2 I'm going to instruct him not to answer. We're 3 out of time. 4 MR. ELSNER: No, I'll get an answer to 5 that question. 6 MS. MILLER: We're out of time. 7 MR. ELSNER: No. 8 BY MR. ELSNER: 9 Q. Answer the question. 10 MS. MILLER: It's seven hours. It's 11 up. 12 MR. ELSNER: It's a summary question, 13 and I'm going to ask for more time from the 14 court in any event. 15 MS. MILLER: Objection. 16 BY MR. ELSNER: 17 Q. Please answer the question. 18 MS. MILLER: Objection. 19 I instruct you not to answer. 20 MR. ELSNER: You can't instruct him 21 not to answer. 22 MS. MILLER: You're out of time. 23 MR. ELSNER: You said one more 24 question, I asked him the question, now you</p>	<p style="text-align: right;">Page 385</p> <p>1 ask one more question, and now you won't let him 2 answer the question. 3 MS. MILLER: Okay. You may answer the 4 question. 5 MR. ELSNER: Can you go back to what 6 the question is so I can read it? 7 MS. MILLER: But I object to it, and I 8 don't think it should be part of the record 9 given that you're out of time. 10 BY MR. ELSNER: 11 Q. As of June of 2014, you were still 12 finding high risk levels even with the new 13 rollout of the new SOM monitoring system with 14 respect to staffing issues, resources to handle 15 the review of orders, and consistent performance 16 of due diligence reviews, correct? 17 A. As I stated, I don't know how these 18 risk levels were determined, and at this point 19 in the process I had no concerns or no reason to 20 believe -- in fact, I was very confident that we 21 were meeting our obligation to have a suspicious 22 order monitoring system. 23 Q. But that's what you wrote in the 24 document, correct?</p>

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<p>1 MS. MILLER: Okay. We're done. We're 2 done. I instruct you not to answer. You're out 3 of time. 4 Can we go off the record? 5 MR. ELSNER: I'll just say on the 6 record that I will consider seeking more time 7 from the court, and I don't consider the 8 deposition complete. 9 MS. MILLER: And I object to that. 10 He's used his seven hours. He's out of time, 11 and we're done. I need to -- 12 THE VIDEOGRAPHER: We're going off -- 13 MS. MILLER: Just to state for the 14 record, I'd like to take a little break and come 15 back with potential redirect. I don't think 16 that it will -- it's going to take much time. 17 THE VIDEOGRAPHER: We're going off the 18 record at 4:53 p.m. 19 (Whereupon, a recess was taken.) 20 THE VIDEOGRAPHER: We're back on the 21 record at 5:09 p.m. 22 EXAMINATION 23 BY MS. MILLER: 24 Q. Mr. Schiavo, I just have one quick</p>	<p>1 (Whereupon, the deposition was 2 concluded.) 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
Page 387	Page 389
<p>1 question. 2 Exhibit 28 that Mr. Elsner showed you 3 towards the end of his examination, do you have 4 that before you? 5 A. I do. 6 Q. And I just wanted to clarify, in the 7 first row under the "Comments" section, can you 8 read what that says to me? 9 A. "In May, the following is the 10 percentage of calls each team member made for 11 flagged orders: Annette 19 percent, Khalilul 12 15 percent, Noah 13 percent, Caitlin 7 percent, 13 Shan 4 percent." 14 Q. And the document reflects that those 15 statistics are for May, is that right? 16 A. This document is -- it says in May, so 17 I would assume that these are May numbers. 18 Q. Thank you. 19 MS. MILLER: That's all I have. 20 MR. ELSNER: Okay. 21 THE VIDEOGRAPHER: This concludes the 22 videotaped deposition of Craig Schiavo. The 23 time is 5:10 p.m., and we are now off the 24 record.</p>	<p>1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS 2 3 I, MAUREEN O'CONNOR POLLARD, RMR, CLR, 4 and Commissioner in the State of Rhode Island 5 and Providence Plantations, do certify that on 6 the 17th day of January, 2019, at 8:06 o'clock, 7 the person above-named was duly sworn to testify 8 to the truth of their knowledge, and examined, 9 and such examination reduced to typewriting 10 under my direction, and is a true record of the 11 testimony given by the witness. 12 I further certify that I am neither 13 attorney, related or employed by any of the 14 parties to this action, and that I am not a 15 relative or employee of any attorney employed by 16 the parties hereto, or financially interested in 17 the action. 18 In witness whereof, I have hereunto 19 set my hand this 20th day of January, 2019. 20 21 _____ 22 COMMISSIONER 23 My Commission Expires April 30, 2020 24</p>

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INSTRUCTIONS TO WITNESS

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3 Please read your deposition over
4 carefully and make any necessary corrections.
5 You should state the reason in the appropriate
6 space on the errata sheet for any corrections
7 that are made.
8 After doing so, please sign the
9 errata sheet and date it. It will be attached
10 to your deposition.
11 It is imperative that you return
12 the original errata sheet to the deposing
13 attorney within thirty (30) days of receipt of
14 the deposition transcript by you. If you fail
15 to do so, the deposition transcript may be
16 deemed to be accurate and may be used in court.
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E R R A T A

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ACKNOWLEDGMENT OF DEPONENT

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3 I, _____, do
4 Hereby certify that I have read the foregoing
5 pages, and that the same is a correct
6 transcription of the answers given by me to the
7 questions therein propounded, except for the
8 corrections or changes in form or substance, if
9 any, noted in the attached Errata Sheet.
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15 Subscribed and sworn
16 To before me this _____
17 _____ day of _____, 20____.
18 My commission expires: _____
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 WITNESS NAME DATE

 Notary Public

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